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APPEALS

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA

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5 UNITED STATES OF AMERICA,)
6 PLAINTIFF,) CASE NUMBER
7 VS.) 01-6095-CR-WDF
8 WILBERT McKREITH,)
9 Defendant.) VOLUME 4 of 6:
) PAGES 809-1069
)

10 TRANSCRIPT of JURY TRIAL had before THE HONORABLE
11 JOSE A. GONZALEZ, JR., in Fort Lauderdale, Broward County,
12 Florida, on Monday, December 16, 2002, in the above-styled
13 matter.

14 APPEARANCES:

15 FOR THE GOVERNMENT: BERTHA MITRANI,
16 ROGER STEFIN,
17 FOR THE DEFENDANT: JOHN HOWES, ESQ.
18
19
20

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112

TABLE OF CONTENTSWitnesses:

JAMES LEWIS	813
Cross-Examination By	
Mr. Howes	813
Cross-Examination By	
Mr. Howes	814
Redirect Examination	
By Mr. Stefin	887
Recross-Examination	
By Mr. Howes	910
Direct Examination By	
Mr. Stefin	923
Cross-Examination By	
Mr. Howes	945
RICHARD VORDER BRUGGE	922
Voir Dire Examination by	
Mr. Stefin	922
Voir Dire Examination by	
Mr. Howes	944
RICHARD VORDER BRUGGE	961
Direct Examination By	
Mr. Stefin	961

INDEX TO EXHIBITSDescription

Defense Exhibit Number 2	860	11
Defense Exhibit Number 5	867	11
Defense Exhibit Number 20	868	10

1 Defense Exhibit Number 21	869	21
2 Defense Exhibit Number 22	871	6
3 Defense Exhibit Number 23	871	23
4 Defense Exhibit Number 24	872	19
5 Government Exhibit Numbers 27, 28, and 29	893	25
6 Government Exhibit Numbers 110-A and 110-B	899	19
7 Government Composite Exhibit Number 110	901	12
8 Government Exhibit Numbers VB1-C, G, and E	1010	10
9 Government Exhibit Numbers 2-D, 2-F, 2-I, and 2-II	1018	8
10 Government Exhibit Numbers VB3-F, VB3-K, and VB3-L	1022	5
12 Government Exhibit Numbers VB4-F, VB4-K, VB4-M	1024	13
13 Government Exhibit Numbers VB5-E, VB5-EE, VB5-D, VB5-H	1026	18
15 Government Exhibit Numbers VB7-K, VB7-H, VB7-D, VB7-J, VB7-I	1029	6
16 Government Exhibit Numbers VB8-G, VB8-H, VB8-E, VB8-F	1031	12
18 Government Exhibit Number 7-EE	1044	25
19 Government Exhibit Number VB3-G	1054	11
20 Government Exhibit Numbers VH-1 and VH-2	1061	17

[Court called to order at 9:05 a.m.]

THE COURT: Good morning, ladies and gentlemen.

Mr. Howes, are you ready?

MR. HOWES: Judge, I need just a minute with my client.

THE COURT: Okay. Ready?

I have a message from Juror Number 1, 2, 3, 4, Mrs. Savlov. She'd like to -- her husband needs a pacemaker. She's the retired legal secretary. And she's asked if we could recess tomorrow afternoon by 3 o'clock if we're still here.

So I'm going to tell her that of course we can do that, so she can go get her husband's pacemaker put in. But I thought I'd bring that to your attention.

And, Mr. Lewis, you're on.

All right. Madam Clerk, bring the jury in, please.

[Jury enters the courtroom].

THE COURT: Members of the Jury, good morning. I hope you had a nice weekend.

We're ready to proceed with the cross-examination of Mr. Lewis.

JAMES LEWIS, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN.

THE COURT: Mr. Lewis, you were sworn last week.

You're reminded, sir, that you are still under oath.

THE WITNESS: Yes, sir.

THE COURT: And you may cross-examine the witness,

Lewis - Cross

1 Mr. Howes.

2 MR. HOWES: Thank you, Your Honor.

CROSS EXAMINATION

4 BY MR. HOWES:

5 Q. Mr. Lewis, you were also involved in the search of the 6 defendant's residence on Percival Avenue, correct?

7 A. No, sir.

8 Q. You are the agent who signed the return on the inventory 9 for that search, correct?

10 A. Yes, sir.

11 Q. Okay. As case agent, you are responsible for the overall 12 investigation in the case, correct?

13 A. Yes, sir.

14 Q. Were you ever at the Percival residence?

15 A. No.

16 Q. Did you ever go by the Percival residence?

17 A. Yes.

18 Q. But you were never inside of it?

19 A. That's correct.

20 Q. Okay. With respect to that search, you're familiar with 21 the items that were taken from that residence, correct?

22 A. Yes, sir.

23 Q. You, likewise, are familiar with the items taken from the 24 69th Terrace residence?

25 A. Correct.

1 Q. Are there any corrections that you would like to make to
2 the agent -- testimony of Agent Sager as to what was seized
3 from that residence?

4 A. I don't think --

5 MR. STEFIN: Objection to the form of the question.
6 THE COURT: Sustained.

7 BY MR. HOWES:

8 Q. You are the affiant on the search warrants?

9 A. Yes.

10 Q. You are the affiant on the return to the Court on the
11 search warrants, correct?

12 A. Yes.

13 Q. So you swear under oath on the return on the search
14 warrants that the items as listed therein are the items that
15 are seized from the house?

16 A. Correct.

17 Q. And you do that based upon your knowledge?

18 A. Yes.

19 Q. And the knowledge or and the information provided to you by
20 others?

21 A. Correct.

22 Q. So when you swore on the return on the inventory of the
23 search at Northwest 69th Terrace as to what was seized, you
24 were doing so based upon what both you knew and what other
25 agents had told you; is that correct?

1 A. Yes.

2 Q. Okay. You also arrested the defendant, correct?

3 A. Correct.

4 Q. When you arrested the defendant, you took a series of items
5 of personal property from him; is that correct?

6 A. Yes.

7 Q. Such as keys?

8 A. Yes.

9 Q. Telephones?

10 A. Yes.

11 Q. Beeper?

12 A. Yes.

13 Q. Watches?

14 A. I don't recall if he had a watch on, he may have, or if I
15 took one from him.

16 Q. Now, before court started this morning, I asked you if all
17 the watches were up here, correct?

18 A. Yes.

19 Q. And you told me, yes, but for one watch that's not been
20 placed into evidence, correct?

21 A. One watch, correct.

22 Q. And that one watch that has not been placed into evidence
23 is a round silver watch with numbers on the outside; is that a
24 fair description of it?

25 A. Yes.

1 Q. Okay.

2 MR. HOWES: May I approach, Judge?

3 THE COURT: Yes, sir.

4 BY MR. HOWES:

5 Q. Let me show you a copy of a document and ask you if you
6 recognize that?

7 A. Yes.

8 Q. And what do you recognize that to be, sir?

9 A. This is a copy of a property receipt that I filled out for
10 Mr. McKreith when he was arrested.

11 Q. Okay. Those are -- that is a report you filled out of
12 items of personal property you took from the defendant,
13 correct?

14 A. Yes.

15 Q. Okay. And on that list of items is a Timex watch on the
16 lower right-hand side; is that correct?

17 A. Yes.

18 Q. Look at Government's Exhibit 16. Is that the Timex watch
19 that you're referring to in that particular item?

20 A. It may be.

21 Q. Well, if that's not the watch, and the only other watch is
22 the one that's back here, it's silver and round and doesn't
23 have a watch band on it, where is the Timex watch that you took
24 from Mr. McKreith?

25 A. It's probably still at our office.

1 Q. Wait a minute now. Let's don't go with probabilities. Do
2 you know where it is?

3 A. No.

4 Q. Okay. When you signed the inventory of items for the
5 search on April 26th, you appeared before Judge Snow, correct?

6 A. Correct.

7 Q. And on April 26th, you swore before her that the inventory
8 is a true and detailed account of the property seized by me on
9 the warrant, correct?

10 A. Correct.

11 Q. Look at these last two pages, Agent, and see if that --
12 that's -- first of all, look at the page before and see if
13 that's your affirmation and whether or not that's your
14 inventory and return?

15 A. Yes.

16 Q. And is that the inventory and return for the Northwest 69th
17 Terrace residence?

18 A. Yes.

19 Q. Tell the members of the jury how many watches are listed in
20 that inventory?

21 A. I see one black diver's watch.

22 Q. Tell the members of the jury how many watches now sit on
23 the witness stand up there?

24 A. Three.

25 Q. Tell the members of the jury how many watches Agent Sager

1 said came from the house?

2 A. I believe three.

3 Q. Tell the members of the jury why, if Agent Sager said three

4 watches came from the house, you swore under oath there was

5 only one watch that was seized that was a diver's type watch?

6 A. Well, I probably did not list this watch, the silver watch,

7 that was seized from his safe.

8 Q. Probably didn't?

9 A. It appears that I didn't --

10 Q. Okay.

11 A. -- that I made a mistake.

12 Q. And then it also appears that the bag with the two watches

13 in it, the two black banded watches, that one of those is the

14 watch that Mr. McKreith had on at the time of his arrest,

15 correct?

16 A. That's possible.

17 Q. So the evidence with respect to what was seized from the

18 house is contaminated; is that fair to say?

19 A. I wouldn't say it was contaminated. They were seized

20 either from Mr. McKreith or his house. It appears that there

21 may have been a mistake as to where they may have been seized

22 from, but three watches were seized either from his person or

23 from the house that day.

24 Q. You say on April 11th that you seized a Timex watch from

25 him, correct?

1 A. No.

2 Q. Okay.

3 A. I know it from the picture.

4 Q. You know it from the picture? Did you hear Agent Sager say

5 that none of the photo -- that the watches weren't visible in

6 the photos?

7 A. Yes.

8 Q. Do you remember me asking you if there was anything you

9 wanted to correct about Agent Sager's testimony?

10 A. Yes.

11 MR. STEFIN: Objection, Your Honor.

12 THE COURT: Sustained.

13 BY MR. HOWES:

14 Q. Did you point out to anyone the fact that Agent Sager, now

15 based upon what you're saying, was mistaken when he said that

16 the watches were not visible in the safe?

17 MR. STEFIN: Object to the form of the question.

18 THE COURT: Overruled.

19 THE WITNESS: No.

20 BY MR. HOWES:

21 Q. Did you tell anyone that perhaps the watch that you took

22 from Mr. McKreith is in that bag allegedly coming from a safe

23 in a house on 69th Terrace?

24 A. No.

25 Q. Did it occur to you that the watch in the bag might well

1 A. Yes.

2 Q. And you say on there that -- or you stated there that the

3 Timex that's in that bag there looks like the Timex that was --

4 that you took from Mr. -- off of Mr. McKreith's wrist, correct?

5 A. It's possible it could be from his wrist. On the return I

6 don't put the name brand of the watch. It just says one black

7 diver's watch.

8 Q. Okay. Would you call this a diver's watch?

9 A. It could be.

10 Q. Well, I mean, is that what you would call that? Is that

11 how you would describe it?

12 A. It's possible.

13 Q. Well, you certainly wouldn't call this a diver's watch,

14 would you?

15 A. No.

16 Q. A diver's watch has numbers on it, right?

17 A. Yes.

18 Q. So that when you're diving, you can calibrate the settings

19 so that you can tell how much air time you have left, correct?

20 A. Correct.

21 Q. Okay. So we don't now know, based upon your testimony,

22 whether or not the two watches in the black bag came from the

23 defendant's person or from someplace else, correct?

24 A. I know that this silver watch was seized from his safe.

25 Q. Were you there?

1 have been the one that came off of Mr. McKreith's hand?

2 A. During his testimony?

3 Q. During any time until I brought it to your attention?

4 A. No, not until you brought it to my attention.

5 Q. Did it occur to you that on your inventory and return that

6 you swore before a United States magistrate judge that you had

7 mentioned only one watch in that inventory and return?

8 A. No, it was nothing that I did intentionally when I swore to

9 the return, it was an oversight.

10 Q. Well, you get a computerized list of items that are seized

11 during the course of the seizure, correct?

12 A. Yes.

13 MR. HOWES: May I approach, Judge?

14 THE COURT: Yes, sir.

15 BY MR. HOWES:

16 Q. Is this what you get?

17 A. Yes.

18 Q. You get the reports from the agents as well, correct?

19 A. Yes.

20 Q. Agent Sager testified about something called a log, a

21 search log?

22 A. Yes.

23 Q. You get a copy of the search log?

24 A. Yes.

25 Q. Actually, you probably get the original of the search log?

1 A. Yes.

2 Q. Okay. You have all those items with you from the 11th
3 until the 26th, correct?

4 A. Of April, yes.

5 Q. Okay. Well, the 26th of April was the date you made your
6 return to Judge Snow?

7 A. Correct.

8 Q. Okay. Now, with respect to those items, you have more than
9 ample time to prepare these inventories and returns?

10 A. Yes.

11 Q. Okay. Now, can you tell me where the original packaging is
12 for Government's Exhibit 16, the two watches?

13 A. You mean, like how -- like a bag, a brown bag or --

14 Q. There were two brown bags that Agent Sager testified to the
15 other day about -- that hats were in like this?

16 A. Correct.

17 Q. Do you know if the watches were placed in a brown bag like
18 this?

19 A. No. As I sit here now, no. But I know that when they were
20 seized, I immediately -- or shortly after returning to the
21 office that day, I placed them into our safe, because I placed
22 them into this bag here.

23 Q. But you don't remember how they were contained, correct?

24 A. No.

25 Q. Okay. You placed the watches into that bag there at the

1 Q. Five dollars and eighty-two cents in loose coins and
2 thirty-six dollars in U.S. currency?

3 A. Yes.

4 Q. How much other money was found in the vehicle?

5 A. None. Maybe some loose change, a few pennies here and
6 there.

7 Q. How much money was found at the Percival Street address?

8 A. None.

9 Q. How much money was found at the Northwest 69th Terrace
10 address?

11 A. None.

12 Q. So from the execution of three warrants, you came up with a
13 grand total of, what did I say, forty-one dollars and
14 eighty-two cents; is that correct?

15 A. Yes

16 Q. Government's Exhibit 21-F was seized -- well, let me give
17 you 21-F, 21-C, 21-D and 21-E.

18 A. Yes.

19 Q. Those were taken from the Mercedes at the time of the
20 search, correct?

21 A. Correct.

22 Q. And those were among approximately three hundred
23 photographs that were in the car; is that correct?

24 And if my ballpark figure's off, you give the jury a
25 better one.

1 FBI office, correct?

2 A. Yes.

3 Q. After your return from the 69th Terrace address, correct?

4 A. Later that day, yes.

5 Q. Okay. After your return from the 69th Terrace address,
6 correct?

7 A. Yes.

8 Q. After your arrest of Mr. McKreith, correct?

9 A. Correct.

10 Q. After your inventory of the property of Mr. McKreith,
11 correct?

12 A. Correct.

13 Q. After the inventory that you, that I showed you before,
14 that you filled out with the items that mentioned the Timex
15 watch?

16 A. Yes.

17 Q. And you put the two watches in that plastic bag, correct?

18 A. Yes.

19 Q. Did you commingle the watch that someone told you came from
20 the safe with the watch that you took from Mr. McKreith?

21 A. It's possible I did.

22 Q. Mr. McKreith had a grand total of forty-one dollars and
23 eighty-two cents on him at the time of his arrest, correct?

24 Does that sound about right? I took the paper back.

25 A. Oh, okay.

1 A. Three hundred is maybe --

2 Q. High?

3 A. -- high.

4 Q. Two fifty? Two hundred?

5 A. One fifty to two hundred probably.

6 Q. Okay. Out of a hundred and fifty to two hundred
7 photographs, you all -- you -- the government has introduced
8 these four; is that correct?

9 A. Correct.

10 Q. Out of the hundred and forty-six to a hundred and
11 ninety-six other photographs, in how many of those was
12 Mr. McKreith wearing a plaid shirt?

13 A. None.

14 Q. In the hundred and forty-six to a hundred and ninety-six
15 photographs, did you view those particular items to determine
16 if you could find a photograph of Mr. McKreith in a plaid
17 shirt?

18 A. Yes.

19 Q. There was undeveloped film in the car, correct, rolls of
20 film?

21 A. Yeah, I believe there was.

22 Q. Okay. Was -- were those rolls of film developed by the
23 FBI?

24 A. No.

25 Q. You went briefly through the home at Northwest 69th

1 Terrace, correct?
 2 A. Yes.
 3 Q. Okay. Let me show you Government's Exhibit 10-G. Do you
 4 recognize that photograph?
 5 A. Yes.
 6 Q. How many bicycles are there in that photograph?
 7 A. Three, I think, looks like three.
 8 Q. There's a photograph in -- there's a picture in the
 9 photograph leaning sideways in the lower left-hand corner?
 10 A. Yes.
 11 Q. Of a black male?
 12 A. Appears to be.
 13 Q. Not Mr. McKreith?
 14 A. It's, it's cut in half. I don't know who it is.
 15 Q. Well, certainly, it would have been the policy and practice
 16 of the Federal Bureau of Investigation, if there was a
 17 photograph of Mr. McKreith in the house, for you to have seized
 18 it for evidentiary purposes, correct?
 19 A. Most likely, yes.
 20 Q. Okay. And so, in fact, that photograph was not seized,
 21 correct?
 22 A. This photograph was not seized, correct.
 23 Q. And you don't know who that is?
 24 A. No.
 25 Q. Did you ever ask anyone to do any follow-up investigation

1 to find out who that was?
 2 A. No.
 3 Q. Do you remember the date that the police first went to the
 4 69th Terrace address?
 5 A. The date that the police --
 6 Q. Yes, the Coral Gables police officer that went there.
 7 A. To the 69th Terrace address?
 8 Q. Yes.
 9 A. I don't believe the Coral Gables police were ever there.
 10 Q. Miami police?
 11 A. Which -- I don't know what event you're talking about.
 12 Q. Some -- excuse me just a minute. The Coral Gables police
 13 went to the 4600 Brooker Street address, correct?
 14 A. Yes.
 15 Q. Okay. And how many males were there, not police officers,
 16 at the house?
 17 MR. STEFIN: Objection, Your Honor.
 18 THE COURT: Overruled.
 19 THE WITNESS: Including Mr. McKreith, four.
 20 BY MR. HOWES:
 21 Q. Okay. Do you recall the names of the other three?
 22 MR. STEFIN: It's all hearsay, Your Honor.
 23 THE COURT: Overruled.
 24 THE WITNESS: Yeah, you're testing me, but I think so.
 25

1 BY MR. HOWES:
 2 Q. Okay. Can you tell us the names?
 3 A. I think there were two McTaggerts (phonetic), one man named
 4 Townes (phonetic), maybe.
 5 Q. On the 20th of March, you conducted a surveillance of --
 6 the 20th of March, 2001, a surveillance was conducted of
 7 Mr. McKreith, correct?
 8 A. I believe so.
 9 Q. It seems like that's the right date?
 10 A. Yes.
 11 Q. Okay. Were you part of that surveillance team?
 12 A. Yes.
 13 Q. Did you see Mr. McKreith that day?
 14 A. Yes.
 15 Q. What was he wearing?
 16 A. He was wearing a multi-colored John Deer jacket.
 17 Q. Okay. I showed you before Government's Exhibit 21-F. You
 18 see it -- you know what this is, right?
 19 A. Yes.
 20 Q. I mean, do I need to show it to you closer?
 21 Okay. Who has on the John Deer jacket in this
 22 picture?
 23 A. Tristen McTaggart.
 24 Q. And that's the same jacket that Mr. McKreith had on?
 25 A. Yes.

1 Q. What else did Mr. McKreith have on on March 20th, 2001?
 2 A. Let me back up for a minute. It appears to be the same
 3 jacket. I don't know if Mr. McTaggart has the same style
 4 jacket in a different size.
 5 But certainly it -- color wise and with the John Deer
 6 emblem, it's a very -- it's the same style jacket. Size wise,
 7 I don't, I don't know.
 8 Q. Well, the size looks pretty big on Mr. McTaggart, doesn't
 9 it?
 10 A. Can I look at it again?
 11 Q. Sure.
 12 A. Well, I don't know. I mean, the sleeve goes right down to
 13 his wrist.
 14 Q. Right.
 15 A. I agree that it is the same style jacket that I saw
 16 Mr. McKreith wearing that day, but I can't -- I don't know if
 17 it's the same -- the actual jacket, same size.
 18 Q. What else did Mr. McKreith have on that you observed on the
 19 20th?
 20 A. He had on a black T-shirt, black pants, and that's all I
 21 remember.
 22 Q. You were looking, were you not, to see if perchance he had
 23 on a plaid shirt that day?
 24 A. I didn't -- I saw him driving the car. I never saw him get
 25 out of the car. So, sure if he was wearing a plaid shirt, that

1 would, that would have been something I might have been looking
 2 for.
 3 Q. Well, it certainly would have been something you'd have
 4 been looking for?
 5 A. Absolutely.
 6 Q. Okay. And your surveillance team would have been looking
 7 for it as well, correct?
 8 A. Yes.
 9 Q. I mean, you had, together, you and your surveillance team,
 10 talked about a plan to observe Mr. McKreith on that day,
 11 correct?
 12 A. Yes.
 13 Q. And you and your surveillance team would have, would have
 14 discussed what it was you were looking for with respect to
 15 Mr. McKreith, correct?
 16 A. Yes.
 17 Q. And in your mind, the plaid shirt by that time had taken on
 18 a significance, correct?
 19 A. Yes.
 20 Q. So you would have told your surveillance team, among other
 21 things, to be looking for that plaid shirt?
 22 A. Yes.
 23 Q. Okay. And no one informed you, none of your surveillance
 24 officers informed you on that day that they saw Wilbert
 25 McKreith in that plaid shirt; is that correct?

1 BY MR. HOWES:
 2 Q. Let me show you Defendant's Exhibit 1 for identification,
 3 and take you back to last Tuesday, and ask you if you remember
 4 that photo copy of the article being given to me then?
 5 A. Yes.
 6 Q. Okay. And that's the photocopy of the article that was
 7 seized from the vehicle, correct?
 8 A. Yes.
 9 Q. Okay.
 10 MR. HOWES: Judge, I don't know if the government has
 11 any objection, but I'd like to introduce this out of order so I
 12 can question the witness about it.

13 MR. STEFIN: No objection, Your Honor.

14 THE COURT: Go ahead.

15 BY MR. HOWES:
 16 Q. There is a photograph in that picture, correct?
 17 A. On the second page, yes.
 18 Q. On the second page. A photograph relative to the matter at
 19 hand?
 20 A. Yes.
 21 Q. Okay. That photograph attributes -- or the Miami Herald
 22 attributes that photograph to Mr. McKreith, correct?
 23 A. Yes.
 24 Q. Okay. And that is a photograph of a car accident where
 25 there was a fatality, correct?

1 A. Correct.
 2 Q. There were photographs taken of that surveillance, correct?
 3 A. Yes.
 4 Q. They're not in evidence?
 5 A. No.
 6 Q. But none of them show Mr. McKreith in a plaid shirt,
 7 correct?
 8 A. Correct.
 9 Q. You've looked at those photographs?
 10 A. Yes.
 11 Q. You're familiar with them?
 12 A. Yes.
 13 Q. You know that there's not a picture of him in a plaid
 14 shirt?
 15 A. Correct.
 16 Q. One of the things that you asked the Court for permission
 17 to search for at the 69th Terrace address, the Percival
 18 address, and in Mr. McKreith's car were newspaper articles,
 19 correct?
 20 A. Yes.
 21 Q. Okay. And a newspaper article was found, correct?
 22 A. In the vehicle, yes.
 23 MR. HOWES: May I approach, Judge?
 24 THE COURT: Yes, sir.
 25

1 A. Yes.
 2 Q. Okay. And did you conduct any investigation to talk to the
 3 officers who were involved in that traffic homicide or traffic
 4 accident investigation about their involvement with
 5 Mr. McKreith?
 6 A. No.
 7 Q. Did you find out whether or not he talked to them about
 8 using any pictures he took?
 9 A. No.
 10 Q. Did you do any follow-up investigation with the Miami
 11 Herald as to how they came into possession of a photograph
 12 that's attributed to Mr. McKreith?
 13 A. No.
 14 Q. Did you do anything other than collect and preserve that
 15 particular item of evidence?
 16 A. No.
 17 Q. There were photographs taken of the vehicle that have been
 18 introduced into evidence, correct?
 19 A. Yes.
 20 Q. Okay. In the normal -- in the course of the FBI's
 21 operations, you take photographs at or near the time of the
 22 seizure of an item to preserve it for posterity as it appeared
 23 at or about the time of its seizure, correct?
 24 A. Yes.
 25 Q. Okay. And that's what was done in this case with

1 photographs, correct?

2 A. Correct.

3 Q. The photographs, that is to say, taken of Mr. McKeith's

4 vehicle, for example, were photographs that were taken at or

5 about the time of its seizure and impoundment, correct?

6 A. Yes.

7 Q. Okay. Let me show you Defendant's Exhibit Number 27. Is

8 this a photograph that was taken at or about the time of the

9 impoundment of the vehicle on April 11th or 12th, 20 --

10 A. No.

11 Q. When was that taken?

12 A. I have no idea. This isn't an FBI photograph.

13 Q. That isn't an FBI photograph?

14 A. No.

15 Q. When -- you don't know where that photograph was from?

16 A. I believe it was from -- it was taken in our back lot, but

17 this is not an FBI photograph.

18 Q. Does it accurately depict the way the car appeared?

19 A. At the time of the seizure?

20 Q. Yes, at the time of the seizure.

21 A. The paint job is much more faded. At the time that this

22 photograph was taken, it was in our back lot for probably

23 several months uncovered.

24 Q. Well, look at 9-A, 9-A.

25 A. Okay.

1 Q. Well, where are the photographs that the FBI took on the

2 day or the day after it was seized?

3 A. If they're interior photographs, which I believe you have

4 in your hand, those are -- those would be the photographs.

5 Q. All right. When was 9-E taken, same time as these others?

6 A. No, that was taken one to two months after or more.

7 Q. And 9-B?

8 A. The same.

9 Q. And 9-C?

10 A. Yes.

11 Q. So its standard course of conduct for the FBI to take

12 photographs at or about the time of an incident didn't -- did

13 not occur in this particular case with respect to this vehicle,

14 correct?

15 A. No, that's not true. We took photographs of the vehicle

16 the day after the seizure. All the interior garage photographs

17 were taken on the 12th.

18 Q. All right.

19 A. We went back and took more photographs at a later time.

20 Q. In 9-D, would it be fair to say that you could see on the

21 hood that it's in pretty bad condition?

22 A. The hood or the --

23 Q. The hood. I'm not talking about the dent, I'm talking

24 about the hood.

25 A. Well, there's some dents in it. It's not a very good

1 Q. And tell me if that's an FBI photograph?

2 A. I believe this is, yes.

3 Q. Okay. And tell me whether or not that accurately depicts

4 the quality of the paint job on or about April 11th or 12th of

5 2001?

6 A. No.

7 Q. No?

8 A. No, this was taken probably one to two months after the

9 seizure.

10 Q. Okay. Would you agree that in the photograph that is

11 before you there, that there is substantial paint peeling on

12 the hood of the vehicle?

13 A. On this photograph, yes.

14 Q. On that one?

15 A. Yes.

16 Q. You'd agree? Okay. So it accurately depicts the way the

17 car appeared on the 12th, right?

18 A. No. It's my recollection that on the 12th, there wasn't

19 this much paint peeling.

20 Q. Would it be fair to say, Agent, that this was not a shiny

21 Mercedes when you got it on the 12th?

22 A. On the 11th?

23 Q. On the 11th?

24 A. It was shinier than it is depicted in those two

25 photographs.

1 picture of the hood.

2 Q. Okay. Well --

3 A. You can only see a quarter of the hood.

4 Q. Were you, were you present when those photographs were

5 taken?

6 A. Yes.

7 Q. A flashlight -- or a flash bulb was used to take the

8 photographs?

9 A. I believe so, yes.

10 Q. You were directing what photographs to be taken?

11 A. Yes.

12 Q. You knew at that time about the lady's testimony, who

13 testified the other day about the robbery over on Galt Ocean

14 Mile, of the shiny Toyota with the spoiler on the back?

15 A. Yes.

16 Q. Okay. Did you attempt to depict this picture as a shiny

17 car?

18 A. No, I didn't attempt to depict it shiny or not. We just

19 took pictures inside the garage.

20 Q. Okay. But you don't take any pictures outside for a month?

21 A. Correct.

22 Q. And that's the ones that are here in evidence?

23 A. Correct. There was a picture of the car outside his house

24 on the day of his arrest.

25 Q. Right. One?

1 A. Yes.
 2 Q. That's Government's Exhibit 10.
 3 A. Correct.
 4 Q. You testified yesterday about placing a BOLO or be on the
 5 look out for vehicles -- for a vehicle, correct?
 6 A. Correct.
 7 Q. And you testified yesterday that you based that BOLO on
 8 partial descriptions from certain individuals; is that correct?
 9 A. It was a compilation of witness descriptions.
 10 Q. That compilation of witness descriptions excluded certain
 11 information?
 12 A. Yes.
 13 Q. For instance, it excluded the spoiler?
 14 A. Correct.
 15 Q. It excluded the shiny paint job?
 16 A. Correct.
 17 Q. It excluded a -- it being a Toyota?
 18 A. Yes.
 19 Q. An Acura Legend?
 20 A. Yes.
 21 Q. And a Jetta?
 22 A. Correct?
 23 Q. It did not include, in any manner, shape or form, what
 24 earlier one witness referred to as a Jesus fish or something
 25 along those lines, a fish on the back?

1 A. Correct.
 2 Q. Okay. You reviewed the reports of that robbery. That's
 3 the one that occurred up at 62nd and Federal Highway, correct?
 4 A. Yes.
 5 Q. What bank was that?
 6 A. Bank of America.
 7 Q. Okay. You reviewed both the Broward Sheriff's Office
 8 reports of that?
 9 A. Yes.
 10 Q. And the reports of the agent who responded to the scene and
 11 talked to the witnesses, correct?
 12 A. Correct.
 13 Q. Did you, in fact, respond to that scene?
 14 A. No, I did not.
 15 Q. Okay. Did you ever go back and interview any of those
 16 witnesses?
 17 A. After that robbery? No.
 18 Q. Well, would you agree that -- did you see the BOLO that the
 19 Sheriff's Department put out?
 20 A. Fort Lauderdale -- the Fort Lauderdale Department?
 21 Q. Fort Lauderdale, Fort Lauderdale police put out, yes.
 22 A. I don't recall if I did or not.
 23 Q. Well, Fort Lauderdale had a detective cooperating with you
 24 in this investigation, right?
 25 A. Yes.

1 Q. And that that detective was supplying you with
 2 documentation concerning the robberies, correct?
 3 A. He was assisting in the investigation.
 4 Q. Okay. And he was turning over reports to you, correct?
 5 A. Other than the initial investigative report, unless you
 6 have something to the contrary, I don't recall him turning over
 7 any other report he might have done.
 8 Q. Without our going into a long explanation that would put
 9 the jury to sleep, is it fair to say that most of the reports
 10 that I get come from the government?
 11 A. Yes. Yes.
 12 Q. Okay. And would it be fair to say that those are -- those
 13 -- that you are the person who gathers those reports for
 14 purposes of getting them to your attorneys to get -- to
 15 disburse, correct?
 16 A. Yes.
 17 Q. Okay. So if there were a BOLO attached to the original
 18 Port Lauderdale offense report, you would have seen it; is that
 19 correct?
 20 A. Correct.
 21 Q. Okay. Because you do remember getting the initial report,
 22 right? You remember getting the initial report?
 23 A. Yes.
 24 MR. HOWES: May I approach, Judge?
 25 THE COURT: Yes, sir.

1 BY MR. HOWES:
 2 Q. See if this is that initial report?
 3 A. Yes.
 4 Q. And that report indicates that there was, in fact, a BOLO
 5 placed out?
 6 A. If you have a particular --
 7 Q. Next to the last -- that last page there.
 8 A. No, it doesn't indicate that a BOLO was sent out.
 9 Q. All right. Well --
 10 A. It's just a description on the police report of what a
 11 witness may have said what the car looked like.
 12 Q. That description contains nothing about there being a fish
 13 symbol on the back of the car, correct?
 14 A. About the fish symbol, no.
 15 Q. Okay. It says, no tag?
 16 A. Correct.
 17 Q. 1990, 1991 Mercedes?
 18 A. Red or maroon.
 19 Q. Red or maroon?
 20 A. Correct.
 21 Q. Okay. Where were you the first time you heard any witness
 22 describe to you the fact there was what one witness,
 23 Mr. Farias, has testified to as a Jesus type fish on the back
 24 of the vehicle?
 25 A. Prior to his testimony or preparation for this trial, there

1 was not a witness that described the fish on the back of the
 2 car.
 3 Q. Were photographs shown to Mr. Farias on the day that he was
 4 preparing to testify?
 5 A. Yes.
 6 Q. Was either Government's Exhibit 10-A or Government's
 7 Exhibit 9-F shown to Mr. Farias?
 8 A. I believe they were.
 9 Q. Would you agree that prominent on both of those photographs
 10 is that symbol, that fish symbol that we've been discussing?
 11 A. Yes. But I don't know when the fish symbol was put on the
 12 car. It could have been after the November 24th robbery.
 13 Q. Okay. So if it was after the November 24th robbery, then
 14 that couldn't have been the car that was involved in it, right?
 15 A. I can't answer for Mr. Farias. I don't --
 16 Q. Well, what I'm saying is, is that if your supposition is
 17 that the fish symbol wasn't put on until after the robbery that
 18 occurred on November 24th, 2000, that the car that belongs to
 19 Mr. McKreith could not have been the car involved, correct?
 20 A. No. I'm saying that I can't answer for what Mr. Farias
 21 saw. I -- what he saw was what he saw.
 22 Q. And you can't, and you can't answer for where Mr. Farias
 23 first got the idea that there was a fish symbol on the back of
 24 the car as well, correct?
 25 A. Correct.

1 subpoena.
 2 Q. Okay. He served him a subpoena at a business address that
 3 Mr. Amira had at that time, correct?
 4 A. I don't, I don't know where the subpoena service took
 5 place.
 6 Q. Well, you're aware that Mr. Amira had a business address,
 7 correct?
 8 A. I'm not aware one way or the other.
 9 Q. Does the address 13605 South Dixie Highway, Suite 434,
 10 Miami, Florida ring a bell with you?
 11 A. Yes.
 12 Q. Okay. Is that the address for Amira Homes, Inc.?
 13 A. It could be. It sounds like a business address.
 14 Q. Well, does that sound like the address -- now, let me show
 15 you a document. Do you recognize this particular document?
 16 A. Yes.
 17 Q. Okay. Is that particular -- that copy of that document,
 18 the one you have in front of you, is that particular copy a
 19 copy of the group of items that were taken from Mr. McKreith's
 20 vehicle on or about the 11th or 12th of April?
 21 A. Yes.
 22 Q. I mean, whatever day it was when the search of the car was
 23 conducted?
 24 A. Yes.
 25 Q. Okay. And that shows -- the address that I read you there

1 Q. Okay. It certainly wasn't in any reports?
 2 A. That's true.
 3 Q. And even though they are somewhat common, would you agree
 4 that that is the kind of information that you would -- well,
 5 would attract your attention if it was given to you?
 6 A. The fish symbol?
 7 Q. Yes.
 8 A. Yes.
 9 Q. And it is the kind of information that you would include in
 10 any BOLO that you would send out?
 11 A. Yes.
 12 Q. Because it would be an identifying type characteristic that
 13 would help you possibly eliminate a whole series of cars?
 14 A. Yes.
 15 Q. To your knowledge, are you the first member of the
 16 prosecution team that came into contact with Ron Amira? And I
 17 mean that in the investigative sense.
 18 A. I was not. Another agent, I believe, was.
 19 Q. Okay. Who was that?
 20 A. I believe it was Agent Miller.
 21 Q. Okay. And did Agent Miller report back to you concerning
 22 Mr. Amira?
 23 A. Regarding?
 24 Q. His conversation with him.
 25 A. He met with him. I believe he may have served him a

1 was the address that appears on that document; is that correct?
 2 A. Yeah. I think you said Suite two hundred something. This
 3 says Suite 434.
 4 Q. Okay. If I did, I'm sorry. But it's 434.
 5 Did you or anyone in the investigative process of this
 6 case determine who Ron Amira used on a -- in the regular course
 7 of business as his closing agent?
 8 A. No.
 9 Q. Did you or anyone else in this case ever check Ron Amira's
 10 ownership of land on the computer system in Dade County for
 11 homes and houses?
 12 A. I didn't, no.
 13 Q. Well, did someone else?
 14 A. Not to my knowledge.
 15 Q. Okay. Agent Miller served a subpoena on Mr. Amira,
 16 correct?
 17 A. I believe so.
 18 Q. And did Mr. Amira produce any documents at that time?
 19 A. At that time, I don't believe so.
 20 Q. Okay. Did he later?
 21 A. Yes.
 22 Q. Okay. Did he have a lawyer when he did that?
 23 A. Yes.
 24 Q. Did he assert a Fifth Amendment privilege at that time?
 25 MR. STEFIN: Objection, Your Honor.

1 * THE COURT: Sustained.

2 BY MR. HOWES:

3 Q. Do you know if Mr. Amira testified here before this jury
4 under a grant of limited immunity?

5 MR. STEFIN: Judge, I'm going to object to the line of
6 questioning of this witness.

7 THE COURT: Sustained.

8 BY MR. HOWES:

9 Q. Did you ever investigate Mr. Amira's brother?

10 A. No.

11 Q. And the --

12 MR. HOWES: I apologize, Mr. McKreith.

13 BY MR. HOWES:

14 Q. Would it be fair to say that Mr. McKreith's car was kind of
15 messy?

16 A. Yes.

17 Q. Did you collect everything in the car that you thought
18 might be of some value?

19 A. There were a number of bags -- check that. Yes, I
20 collected items or papers that I thought were relevant to the
21 case.

22 Q. And at the time of the, at the time of that collection, the
23 name Ron Amira meant something to you, correct?

24 MR. STEFIN: Object to the form of the question.

25 THE COURT: I don't understand the question.

1 for his brother's business that had been closed down since
2 1995, correct?

3 A. Correct.

4 Q. There were no records in Mr. McKreith's possession of
5 Mr. Vidal and Vidal Construction, or whatever the name of his
6 company was, the man who didn't pay taxes, right?

7 A. Correct.

8 Q. Okay.

9 THE COURT: Boy, we all remember him, don't we?

10 BY MR. HOWES:

11 Q. In the three searches that were conducted on Mr. -- with
12 respect to Mr. McKreith, was a typewriter found?

13 A. No.

14 Q. Was a computer found?

15 A. No.

16 Q. Have you ever seen Mr. McKreith at a typewriter?

17 A. No.

18 Q. You ever seen him at a computer?

19 A. No.

20 Q. Was there ever a handwriting comparison done of the
21 documents that have been submitted into evidence here comparing
22 them to Mr. McKreith's handwriting?

23 A. No.

24 Q. Did you ever talk to Carol Robison, R-O-B-I-S-O-N?

25 A. No.

1 Sustained.

2 MR. HOWES: Well, I'll rephrase it then.

3 BY MR. HOWES:

4 Q. Were you aware that Mr. McKreith was the registered owner
5 of the 69th Terrace house?

6 A. At -- when?

7 Q. On the date of his arrest?

8 A. I believe on the day of his arrest, yes.

9 Q. On the -- how about the Brooker Street house?

10 A. I know that he had used that address as a place of
11 residence, yes.

12 Q. Do you know -- did you, did you know whether or not Ron
13 Amira's -- had Ron Amira's name come to your attention on the
14 date of his arrest?

15 A. Probably on the day of his arrest, yes.

16 Q. Because you looked through documents, correct?

17 A. Correct.

18 Q. And the name of Mr. Amira's pool company came to your
19 attention at that time too, correct?

20 A. I don't know about that day, but soon thereafter.

21 Q. Well, let me just cut to the chase here. There were no
22 documents in Mr. McKreith's vehicle that had Ron Amira's name
23 on them, other than closing documents, correct?

24 A. I believe that's true.

25 Q. There were no business cards with Ron Amira's name on it

1 Q. Concord Title Insurance Agency?

2 A. Yes.

3 Q. Okay. You never talked to her?

4 A. Yeah, now that you put it with Concord Title, I may have.

5 Q. Okay. With respect to Ron Amira?

6 A. No, with respect to Mr. McKreith.

7 Q. Okay. Did you ask Ms. Robison at Concord Title Insurance
8 Agency how many closings she had done for Ron Amira?

9 A. I don't think so, no.

10 Q. When you testified the other day, you pointed out some
11 differences between the bank records of Mr. McKreith and some
12 loan documents that were submitted, correct?

13 A. Yes.

14 Q. After getting those documents, did you ever go back and
15 check with anyone with respect to how Mr. Amira had sold other
16 houses in the area?

17 A. No.

18 Q. Did you ever talk to his brother to see if his brother had
19 ever had contact with Wilbert McKreith?

20 A. No.

21 Q. Did you see anyone prepare the documents that went with the
22 policy -- the paperwork submitted in order that loans could be
23 had on the properties?

24 A. No.

25 Q. You simply subpoenaed, you being law enforcement, through

1 the Grand Jury, subpoenaed the records of the various mortgage
 2 companies, correct?
 3 A. Correct.
 4 Q. Do you know -- let me back up. Did you attempt to
 5 determine how it was that those particular lending institutions
 6 came to be involved in this case -- or in those loans, I should
 7 say?
 8 A. No.
 9 Q. Do you know whether or not Mr. Amira used any of those same
 10 companies to secure loans?
 11 A. I have no knowledge either way.
 12 Q. Would it be fair to say that Mr. Amira, on the three pieces
 13 of property, was making about a fifty percent return on his
 14 investment when he's selling these properties to Mr. McKreith?
 15 A. I don't know what he was making on the properties.
 16 Q. Well, you've got a Master's degree in criminology and in
 17 what?
 18 A. Forensics.
 19 Q. Forensics. Okay. So that includes document examination?
 20 A. I took a course in it.
 21 Q. Okay. You looked at the closing statements, right?
 22 A. Yes.
 23 Q. You looked at the closing statements on the seventy-five
 24 thousand dollar house that was purchased, right?
 25 A. Yes.

1 robbery occurred in Lauderdale by the Sea at SouthTrust?
 2 A. The day of.
 3 Q. The day of?
 4 A. I believe so.
 5 Q. Or the day after?
 6 A. Day of.
 7 Q. The day of, okay.
 8 Now, find that one for us first, please.
 9 A. Okay.
 10 Q. You've got a cash receipt there?
 11 A. I believe it is, yes. I don't see a credit card --
 12 Q. Well, look at your summary on the, look at your summary
 13 that's on the left side there. I think it's 20-A.
 14 A. Yes.
 15 Q. Okay. And when you were testifying to this jury, you were
 16 attributing that to Mr. McKreith, correct?
 17 A. Yes.
 18 Q. Because it was in the car, correct?
 19 A. Because it was what?
 20 Q. In the car.
 21 A. Yes.
 22 Q. Okay.
 23 A. And his name is on it.
 24 Q. His name is on that one?
 25 A. Wilbert.

1 Q. And you saw that there was a forty-one thousand dollar
 2 first mortgage by Ron Amira that was paid off, right?
 3 A. Yes.
 4 Q. And he came away with about twenty thousand dollar --
 5 twenty-one thousand dollars from the sale to Mr. McKreith of
 6 that house, right?
 7 A. Yes.
 8 Q. And that's pretty consistent with the spreads between the
 9 price Mr. Amira was paying and the price Mr. McKreith was
 10 paying on the house, that is, for the percentages that
 11 Mr. Amira was making per house to Mr. McKreith, right?
 12 A. Yes.
 13 Q. Before the jury came in today, you and I took a look at
 14 Exhibit 20, right?
 15 A. Yes.
 16 Q. And you and I, in a pleasant way, talked about the fact
 17 that I put some stickers on some particular items there for
 18 you; is that correct?
 19 A. Yes.
 20 Q. Okay. When you testified the other day on direct
 21 examination, you discussed the fact that there were cash
 22 deposits -- I'm sorry, cash receipts found in Mr. McKreith's
 23 car, correct?
 24 A. Yes.
 25 Q. One of those was for a break job done the day after the

1 Q. Wilbert is on that one?
 2 A. Yes.
 3 Q. Okay. Now, tell me -- let's go to the first one that is
 4 marked there.
 5 A. Okay.
 6 Q. That's a cash receipt and that's 20-A, correct?
 7 A. 20-1, twenty dash one.
 8 Q. 20-1. Okay. 20-1 is a cash receipt. Who's the money
 9 from?
 10 A. There's no name on the -- other than the name of the
 11 company, there's no name on who purchased it.
 12 Q. Okay. What's the next one, twenty dash what?
 13 A. Six.
 14 Q. Okay. Who's that one to?
 15 A. No name.
 16 Q. How much is it for?
 17 A. One eighty.
 18 Q. What is it from?
 19 A. No, one seventy-eight thirty-nine. Jarman Shoe Store.
 20 Q. Did you ever go to Jarman Shoe Store?
 21 A. No.
 22 Q. Did anyone else go to Jarman Shoe Store?
 23 A. Nope.
 24 Q. Oh, 20-1 was for Base Station OZI, right, a TV, VCR?
 25 A. Yes.

1 Q. Seventeen hundred and fifty dollars cash?

2 A. Yes.

3 Q. Did you ever determine who it was that purchased those

4 items?

5 A. No.

6 Q. Okay. And your next one was twenty dash -- what was the

7 next one, Jarman Shoes, 20-6?

8 A. Six.

9 Q. There's no showing of who bought shoes at Jarman Shoe

10 Store, correct?

11 A. On the receipt, no.

12 Q. Okay. Well, is there someplace other than the receipt that

13 you have there in evidence that indicates who it was that made

14 the purchase?

15 A. Other than it was found, you know, during the search, no.

16 Q. Okay. What's the next one that's marked there?

17 A. 20-7.

18 Q. That's an auto repair?

19 A. Yes.

20 Q. And does it have an indication of who's the payor, who the

21 money came from?

22 A. No, just that it was on a Mercedes.

23 Q. Doesn't say a beat up 1989, 190 Mercedes, right?

24 A. No.

25 Q. What's the next one that has a mark on it?

1 A. No.

2 Q. And what's the next one?

3 A. 20-17.

4 Q. King David Jewelry?

5 A. Correct.

6 Q. King David, Inc.?

7 A. Yes.

8 Q. Any name on there?

9 A. No.

10 Q. What's the next one?

11 A. 20-18.

12 Q. Tommy Hilfiger?

13 A. Yes.

14 Q. Any indication on that one?

15 A. No.

16 Q. Okay. Have we covered all of the cash receipts, to the

17 best of your recollection, in there?

18 A. Yes.

19 Q. Okay. So two out of ten have Wilbert McKreith's name on

20 it, right?

21 A. Yes.

22 MR. HOWES: I need just a moment, Judge.

23 BY MR. HOWES:

24 Q. You testified on direct examination that you found this Sun

25 Pass in Mr. McKreith's vehicle?

1 A. 20-13.

2 Q. Flagmore Electronic, a Sanyo Discman, right?

3 A. Yes.

4 Q. A hundred and ten dollars?

5 A. Yes.

6 Q. Who bought it?

7 A. The signature on the bottom says Wilbert McKreith.

8 Q. Okay. Foot Locker Shoes, is that the next one?

9 A. Yes.

10 Q. Does it say who bought it?

11 A. No.

12 Q. Okay. What's the next one?

13 A. 20-15.

14 Q. All right. Those are money orders. Does it indicate who

15 bought the money orders?

16 A. No.

17 Q. Did you try to trace any money orders in this case?

18 A. No.

19 Q. You knew of three mortgage -- or three lending institutions

20 that were involved in this case, correct?

21 A. Yes.

22 Q. And you never tried to track down whether or not all or

23 part of this eight hundred and fifty-nine dollars and fourteen

24 cents went to one or more of those lending institutions,

25 correct?

1 A. Yes.

2 Q. Pursuant to the execution of a search warrant?

3 A. Yes.

4 Q. Where in the vehicle did you find it?

5 A. I believe in the dashboard area, maybe front windshield.

6 Q. Was it attached or unattached?

7 A. I don't, I don't recall.

8 Q. Okay. Let me show you your application for the search

9 warrant with respect to this matter.

10 A. Okay.

11 Q. Can you go to the last couple of pages there, your

12 inventory and return?

13 A. Okay.

14 Q. Can you tell the members of the jury whether or not it

15 indicates that the Sun Pass was found there?

16 A. No, it -- no.

17 Q. So the official record that's filed with the clerk of the

18 court from the order of this Court doesn't indicate that the

19 Sun Pass was found, correct?

20 A. That's correct.

21 Q. Did you write a report concerning finding any of these

22 items?

23 A. I wrote a report detailing the -- or covering the fact that

24 the vehicle was searched.

25 Q. Okay. Do you remember how much the income tax return for

1 the year 2000 showed Mr. McKreith was going to get back in the
2 papers that were in his car?

3 A. Offhand, no.

4 Q. Okay. Was it several thousand dollars?

5 A. I don't know.

6 MR. HOWES: Judge, I'd like to go to Defendant's
7 Exhibit Number 2 now. And may I approach, Judge?

8 THE COURT: Yes, sir.

9 BY MR. HOWES:

10 Q. Before the jury came in today, you and I looked at this
11 particular item, correct?

12 A. Yes.

13 Q. And I made a -- I asked you to look at a copy that I had
14 produced over the weekend to check its accuracy, correct?

15 A. Yes.

16 Q. Okay. And you did that?

17 A. Yes.

18 Q. And it's accurate?

19 A. Appears to be, yes.

20 Q. Can you give me the benefit of the doubt on that one, Agent
21 Lewis?

22 A. All right. Yes.

23 Q. Okay. And you and I agree that it would be easier for you
24 to read the larger print on the copy than it is the other one,
25 right?

1 A. Yes.

2 Q. Now, this particular item, Defendant's Exhibit Number 2,
3 was found in the vehicle?

4 A. Yes.

5 Q. Okay. And what is Exhibit -- Defendant's Exhibit Number 2?

6 A. It's a receipt book.

7 Q. Okay. And does that receipt book have entries in it?

8 A. Yes.

9 MR. HOWES: Your Honor, at this time, I would move to
10 introduce into evidence Defendant's Exhibit Number 2.

11 THE COURT: It will be received in evidence.

12 MR. STEFIN: No objection.

13 [Defense Exhibit Number 2 was marked and received in
14 evidence].

15 THE WITNESS: You want a sticker on this, sir?

16 BY MR. HOWES:

17 Q. No, I'm going to put it in an envelope.

18 A. Oh, okay.

19 Q. And I want you keep that one.

20 A. Okay.

21 Q. Now, you don't have to trust me on the math on this one,
22 okay, but let's go through the copies of the receipts and see
23 if we can come up with some number with respect to monies
24 received.

25 First of all, do you know who Francis Evans is?

1 A. No.

2 Q. Before I ask you the name, did it ring a bell with you?

3 A. I saw it on the receipt book, yes.

4 Q. Well, did you see it any place else?

5 A. No.

6 Q. How about Roland Taylor (phonetic)?

7 A. Yeah, it was familiar. I believe he may have been a renter
8 on one of the properties.

9 Q. Okay. Well, let's go to Roland Taylor and go back to some
10 of the documents found in Mr. McKreith's car and see if this
11 helps you with your memory with respect to Roland Taylor.

12 A. Okay. Yes.

13 Q. In fact, you found a rental agreement?

14 A. Yes.

15 Q. Okay. Signed by Mr. Taylor?

16 A. Okay.

17 Q. Agreeing to pay rent to Mr. McKreith, correct?

18 A. Yes.

19 Q. Okay. Do you remember also seeing -- this isn't a trick
20 question -- you also remember seeing similar documents from
21 Francis Evans?

22 A. Yes.

23 Q. So is it fair to say that in the items of evidence you
24 collected from Mr. McKreith's car, that you found rental
25 agreements that correlate to the information in the rental

1 receipt book; is that correct?

2 A. Yes.

3 Q. And the first entry is April 1st, 2000, correct?

4 A. Yes.

5 Q. For seven hundred and fifty dollars?

6 A. Yes.

7 Q. The next entry is April -- from Francis Evans?

8 A. Correct.

9 Q. Okay. The second entry is April 14th, 2000, a deposit for
10 four hundred dollars?

11 A. Yes.

12 Q. And if my math is correct, that brings us -- well, to a
13 total of one thousand one hundred and fifty dollars, right?

14 A. Yes. No, I trust you. Math was not my strong point.

15 Q. Well, it wasn't mine either or I'd be a doctor, okay? It's
16 there if you want it, you know.

17 A. Okay.

18 Q. However you want, however you want -- however you feel most
19 comfortable. May 2nd's another one for seven fifty, right?

20 A. Yes.

21 Q. June 3rd's another one for seven fifty, right?

22 A. Yes.

23 Q. July 8th is another one for seven hundred and seventy-five?

24 A. There were two June 3rds.

25 Q. Two June 3rds?

1 A. Yes.
 2 Q. I missed one?
 3 A. Yes.
 4 Q. Or is it the same one that I just copied twice?
 5 A. No, it's different.
 6 Q. See what you get for trusting me? Okay. How much is that
 7 one? We'll have to add that in.
 8 A. The second one is two fifty.
 9 Q. All right. Then we've got an August 3rd one. You have the
 10 July 8th we've talked --
 11 A. Correct.
 12 Q. -- about already, right --
 13 A. Correct.
 14 Q. -- for seven seventy-five.
 15 Then August 3rd for seven fifty?
 16 A. Correct.
 17 Q. Then September 4th for seven fifty?
 18 A. Yes.
 19 Q. Then October 10th for seven sixty-five?
 20 A. Yes.
 21 Q. Then November 3rd for seven fifty?
 22 A. Yes.
 23 Q. And then December 11th there's seven sixty paid, but a note
 24 that's -- note on the receipt that she owes thirty dollars,
 25 right?

1 Q. Example two of why not to trust me.
 2 April 2nd, Arlene Higgins pays eight hundred dollars?
 3 A. Hang on a second. You said March -- You said March 3rd.
 4 Q. Right.
 5 A. It's really March 5th. Six sixty.
 6 Q. Six sixty.
 7 A. Okay.
 8 Q. Arlene Higgins on April 2nd pays eight hundred?
 9 A. Correct.
 10 Q. And also on April 2nd, this is Calvian or Calvin Madget
 11 (phonetic) pays six fifty?
 12 A. Yeah. Yes.
 13 Q. Okay. So would you more or less agree that the total is
 14 eleven thousand one hundred eighty-five dollars?
 15 A. Yes.
 16 Q. Plus the two fifty, which you need to add on for me.
 17 A. Okay. Eleven thousand four thirty-five.
 18 Q. Now, did you talk to Francis -- you already -- I already
 19 asked you if you talked to Francis Evans. Did you ever talk to
 20 Roland Taylor?
 21 A. No.
 22 Q. Arlene Higgins?
 23 A. No.
 24 Q. Calvin Madget?
 25 A. No.

1 A. Correct.
 2 Q. And then an undated one in 2001 for Francis Evans that has
 3 a note on it. She paid seven seventy-five, but there's a note
 4 on the receipt she owes two hundred and fifty dollars, right?
 5 A. Yes. Two hundred -- owes twenty-five.
 6 Q. Two hundred -- two hundred --
 7 A. Owes twenty-five.
 8 Q. Owes twenty-five. Okay. Now, if my math is correct,
 9 without including the one I forgot, we're at seven thousand
 10 nine hundred and seventy-five dollars at this point, right?
 11 A. Correct.
 12 Q. So if we add the two hundred and fifty -- and, please, you
 13 use the calculator -- well, we'll do -- we'll add the two fifty
 14 at the end, okay?
 15 A. All right.
 16 Q. All right. Now, then February 3rd, Roland Taylor pays a
 17 thousand one hundred dollars?
 18 A. Yes.
 19 Q. And there's a note of two hundred dollars due?
 20 A. Correct.
 21 Q. March 3rd, Roland Taylor pays six hundred and sixty
 22 dollars?
 23 A. March 5th.
 24 Q. March 5th?
 25 A. Yes.

1 Q. There were also some other items found in Mr. McKreith's
 2 vehicle or on his person, correct?
 3 A. Other than?
 4 Q. Other than what we've talked about so far?
 5 A. Yes.
 6 Q. For example, you got some credit cards from him, a
 7 Mastercard, First Union Visa, some other things like that?
 8 A. Yes.
 9 Q. Okay.
 10 MR. HOWES: Judge, may I approach and go through a
 11 couple of these items with him?
 12 THE COURT: Yes, sir.
 13 BY MR. HOWES:
 14 Q. Now, last week before trial we all met together, the four
 15 of us, right?
 16 A. Yes.
 17 Q. And while we're looking at items, you -- the office was
 18 good enough to make me copies of some things, correct?
 19 A. Yes.
 20 Q. And let me show you some of these items and see if you
 21 recognize what they are, and then you can tell us where you
 22 found them.
 23 First of all, Exhibit Number 5, Defendant's Exhibit
 24 Number 5. Do you recognize that?
 25 A. Yes.

1 Q. Okay. Do you remember where you found that?
 2 A. In the vehicle.
 3 Q. Okay. And can you tell us what that is?
 4 A. It's a check from Amira Homes to Wilbert McKreith for
 5 seventy-one hundred and fifty dollars.
 6 Q. Can you tell us the date on that?
 7 A. August 31st, 2000.
 8 Q. Okay.

9 MR. HOWES: Your Honor, we would move to introduce
 10 that into evidence --

11 THE COURT: It will be received in evidence.

12 MR. HOWES: -- as Exhibit 5.

13 [Defense Exhibit Number 5 was marked and received in
 14 evidence].

15 BY MR. HOWES:

16 Q. Let me show you Defendant's Exhibit Number 16, and ask --
 17 well, that's not the one. Exhibit Number 20. Do you recognize
 18 that particular item?

19 A. Yes.

20 Q. Okay. Was that an item found inside Mr. McKreith's
 21 vehicle?

22 A. Yes.

23 Q. Okay. And what is that item?

24 A. It's a Home Depot receipt, statement.

25 Q. Okay. Does it show a balance on the statement?

1 A. Yes.
 2 Q. What does it show as the balance?
 3 A. Four hundred and twenty-five dollars and four cents.
 4 Q. Okay. Does it show a credit line?
 5 A. Five hundred, five hundred dollars.
 6 Q. So he's right at the credit line?
 7 A. Yes.
 8 Q. Okay.

9 MR. HOWES: Your Honor, I'd move to introduce
 10 Defendant's Exhibit Number 20 into evidence.

11 THE COURT: It's received in evidence.

12 [Defense Exhibit Number 20 was marked and received in
 13 evidence].

14 BY MR. HOWES:

15 Q. Look at Exhibit Number 21, if you would, please, and see if
 16 you recognize it?

17 A. Okay.

18 Q. Do you recognize it?

19 A. Yes.

20 Q. What is that?

21 A. It's a statement from Chase Platinum Mastercard.

22 Q. In the name of Wilbert McKreith?

23 A. There's no name on it.

24 Q. Okay. Well, did you ever check to find out if Mr. McKreith
 25 had a Chase Platinum card?

1 A. No.
 2 Q. Did you ever check any of Mr. McKreith's credit cards?
 3 Well, let me back up. Did you seize any credit cards from
 4 Mr. McKreith?
 5 A. Yes.
 6 Q. Did you check to see if he had any credit available on any
 7 of those cards?
 8 A. I don't believe so, no.
 9 Q. Can you -- did you check to see whether or not he had ever
 10 made any cash advances on any of those cards?
 11 A. No.
 12 Q. Can you tell us whether or not this Chase account is one of
 13 the accounts that you obtained a credit card for?
 14 A. I can't -- sitting here today, no.
 15 Q. Is there anything that will help you --
 16 A. That property receipt might. Okay. I listed -- it
 17 just says -- okay. Two Chase Mastercards.
 18 Q. And this is consistent with that; is that correct?
 19 A. Yes.

20 MR. HOWES: Your Honor, I would move to move
 21 Defendant's Exhibit 21 into evidence.

22 THE COURT: 21 is received in evidence.

23 [Defense Exhibit Number 21 was marked and received in
 24 evidence].

25

1 BY MR. HOWES:
 2 Q. Okay. Would you tell the members of the jury, please, what
 3 the credit line is on this card?
 4 A. Five thousand.
 5 Q. And what's the outstanding credit available?
 6 A. Forty-nine hundred and fifty -- four thousand nine hundred
 7 and fifty-four dollars.
 8 Q. What's the credit available, not the balance?
 9 A. Oh, okay. Forty-five dollars.
 10 Q. You're familiar with Nation City Mortgage with respect to
 11 this investigation?
 12 A. Yes.
 13 Q. Let me show you a copy of a letter dated April 6, 2001.
 14 Now, National City Mortgage was the company for the third house
 15 that was purchased in order; is that correct?
 16 A. I believe so, yes.
 17 Q. And are you familiar with this particular document?
 18 A. Yes.
 19 Q. Did this document come from Mr. McKreith's car as well?
 20 A. Yes.
 21 Q. And is it in the -- although, this is a copy. It was made
 22 by the US Attorney's Office for me, right?
 23 A. Yes.
 24 Q. And it's a good reproduction of the original?
 25 A. Yes.

1 Q: Okay.

2 MR. HOWES: And I move to introduce this into evidence
3 as well, Judge. This is 23.

4 THE COURT: Defendant's 23 will be received in
5 evidence.

6 THE WITNESS: 22.

7 MR. HOWES: Judge, it's 22, for the record.

8 THE COURT: 22 will be received in evidence.

9 [Defense Exhibit Number 22 was marked and received in
10 evidence].

11 BY MR. HOWES:

12 Q. Okay. Do you remember the letter?

13 A. Yes.

14 Q. Bottom line it says, you haven't paid us? He's behind?

15 A. Yes.

16 Q. Exhibit 23 is a BrandsMart bill?

17 A. Okay.

18 Q. Do you remember finding that?

19 A. Yes.

20 Q. In Exhibit Number 20, the red book had some BrandsMart
21 receipts in it, correct?

22 A. Yes.

23 Q. Does it show what --

24 MR. HOWES: Judge, move to introduce 23 into evidence.

25 THE COURT: 23 will be received in evidence.

1 [Defense Exhibit Number 23 was marked and received in
2 evidence].

3 BY MR. HOWES:

4 Q. Does it show what Mr. McKreith's balance was there?

5 A. Give me a minute. You going to, you going to help me or
6 are you going to make me -- credit available?

7 Q. Credit available.

8 A. Credit zero.

9 Q. Okay. Credit limit?

10 A. Five thousand.

11 Q. Okay. So he max'd this one out too?

12 A. Yes.

13 Q. Exhibit Number 24. Do you recognize this First Union
14 Mastercard, Visa?

15 A. Yes.

16 Q. Okay. And that was also seized from his car?

17 A. Yes.

18 Q. Okay.

19 MR. HOWES: I'd move that into evidence as well,
20 Judge.

21 THE COURT: It will be received in evidence.

22 [Defense Exhibit Number 24 was marked and received in
23 evidence].

24 BY MR. HOWES:

25 Q. Okay. What does that show as the credit line?

1 A. Fifteen hundred.

2 Q. What does it show as the amount used on the card?

3 A. Fourteen fifty-nine.

4 Q. And it's not even Christmas, right?

5 With respect to each of these bills that we've just
6 introduced into evidence here, was any follow-up investigation
7 done with that?

8 A. We subpoenaed bank statements from First Union.

9 Q. Okay.

10 A. But in reference to the credit card, no.

11 Q. Okay. You subpoenaed Mr. McKreith's bank records?

12 A. Yes.

13 Q. Some of those bank records have been introduced?

14 A. Yes.

15 Q. Not all of them. The records for McKreith and Company have
16 not been introduced, correct?

17 A. For McKreith and Company, correct.

18 Q. Okay. Let's turn to some evidence that was seized for a
19 while. How many different -- how many, of the ten different
20 banks, did someone come from some law enforcement agency to
21 conduct a crime scene investigation?

22 A. I believe all of them.

23 Q. Well, wasn't there one where the information was that the
24 perpetrator was wearing gloves, and because of that, no crime
scene persons came?

1 A. Yes.

2 Q. Okay. So nine out of ten?

3 A. Eight -- seven out of eight.

4 Q. Seven out of eight. Seven out of eight. My math's off, as
5 you know. Okay. Seven out of eight there's crime scene
6 investigation done. How many of those cases were fingerprints
7 lifted?

8 A. There were a few incidents where fingerprints were lifted.
9 And then I matched up, or attempted to match up Mr. McKreith's
10 known prints to those lifted and no match was effected.

11 Q. So for all of the prints that were taken from all of the
12 robberies, Mr. McKreith's prints did not match any of them?

13 A. That's correct.

14 Q. And whose prints, other than Mr. McKreith's, did you try to
15 match?

16 A. None.

17 Q. Okay. The Federal Bureau of Investigation has an extensive
18 computerized file on fingerprints, correct?

19 A. Yes.

20 Q. It has, in layman's terms, a methodology by which it can
21 match by numbers on a general basis someone's fingerprints,
22 right?

23 A. Correct.

24 Q. For instance, they would take my thumb print and assign it
25 a series of two digit numbers, be it ten, twelve, twenty,

1 whatever it is, they would assign a series of numbers to that,
 2 and that would be the code for my thumb print, right?
 3 A. Correct.
 4 Q. And then they can run a thumb print from, I don't know,
 5 this gun, wherever it is. Where's the gun?
 6 A. In the box.
 7 Q. They could run a print off this gun to see if that was
 8 mine, correct?
 9 A. Yes.
 10 Q. Because the same process by which they use to classify my
 11 thumb print with a series of numbers, they would use to
 12 classify this print off the gun, the same series of numbers,
 13 correct?
 14 A. Yes.
 15 Q. They could then, or somebody could, use a computer and tell
 16 it to match all the prints out there to see if there's a match
 17 between the thumb print that comes from me here and the thumb
 18 print there, not knowing whose this print is, correct?
 19 A. Correct.
 20 Q. Okay. Was that done in this case?
 21 A. Nope.
 22 Q. Okay. An item of physical evidence from a person's body
 23 was found in this case, correct?
 24 A. Yes.
 25 Q. A hair?

1 individual. Did that name ring a bell with you?
 2 A. Yes.
 3 Q. Okay. Do you know why that question was asked?
 4 MR. STEFIN: Objection, Your Honor. Form of the
 5 question.
 6 MR. HOWES: I'll withdraw the question.
 7 BY MR. HOWES:
 8 Q. In that particular case, in Kelvin -- what's his name,
 9 Kelvin?
 10 A. Gibson.
 11 Q. Gibson. In Kelvin Gibson's case, did you work that one?
 12 A. No.
 13 Q. But you're familiar with the investigation?
 14 A. I know the name.
 15 Q. Okay. You know the investigation?
 16 A. I responded to some of the robberies, yes.
 17 Q. You know that the FBI matched hairs from the mask to Kelvin
 18 Gibson, right?
 19 A. No, I don't know one way or another.
 20 Q. You don't know one way or the other?
 21 A. Right.
 22 Q. But you know that if you wanted to, you could have sent
 23 this mask and this mask and this shirt to the FBI for
 24 processing for DNA, correct?
 25 A. Yes.

1 A. Yes.
 2 Q. Okay. Do you remember seeing the hair?
 3 A. No.
 4 Q. Do you remember telling anyone to do anything with the
 5 hair?
 6 A. No.
 7 Q. Unlike Agent Tager (sic), you're familiar, other than
 8 what's on television, with DNA, correct?
 9 A. Correct.
 10 Q. In the broadest sense. I'm not going to ask you to explain
 11 the molecular thesis involved.
 12 A. Please don't.
 13 Q. Okay. But you're aware that DNA matching can be done from
 14 hair samples, correct?
 15 A. Yes.
 16 Q. And you're aware that the government has the authority to
 17 ask any person, whether -- actually, whether charged or not
 18 charged, to appear under certain circumstances and produce hair
 19 samples?
 20 A. Yes.
 21 Q. For comparison purposes?
 22 A. Yes.
 23 Q. Okay. And that is done in bank robbery cases, correct?
 24 A. Yes.
 25 Q. I mentioned a name to Agent Sager the other day of an

1 Q. And since I've been the butt of my own jokes, I'll continue
 2 with it. We lose -- all lose hair everyday, right?
 3 A. Yes.
 4 Q. And -- well, this is forensics. This is your Master's
 5 area. It's something you know well, right?
 6 A. Yes.
 7 Q. Okay. That was not done in this case?
 8 A. That's correct.
 9 Q. Okay. Even though the items had been seized, correct?
 10 A. Yes.
 11 Q. Okay. There is -- because of the type of material used in
 12 those caps, there is a good possibility that hair or other
 13 human material subject to DNA testing could be found there,
 14 correct?
 15 A. It's possible.
 16 Q. I mean, I'm talking about even the skin that we all shed
 17 off ourselves everyday?
 18 A. Correct.
 19 Q. And while that might not indicate that a particular mask
 20 was worn at a particular time, on a particular day, in a
 21 particular robbery, it could, if it matched up, at least tell
 22 us whether or not, at some point in time, Wilbert McKeith did
 23 or did not wear that particular hat, correct?
 24 A. In theory, yes.
 25 Q. Well, are you saying that the DNA is inaccurate?

1 A: No.
 2 Q. Okay. You're saying that it might not show up?
 3 A. Correct.
 4 Q. Okay. Likewise, our body loses cells that could be present
 5 on a shirt, correct?
 6 A. Yes.
 7 Q. Okay. The shirt was not tested, sent to the lab for DNA
 8 testing, correct?
 9 A. Not for DNA testing.
 10 Q. Okay. Not for DNA testing.
 11 The United States has the authority to ask a court to
 12 have someone try on particular items of clothing, correct?
 13 A. Yes.
 14 Q. Okay. Not having any photographs of Mr. McKreith in your
 15 collection that you obtained from the car, did you ever ask
 16 that --
 17 MR. STEFIN: Objection, Your Honor.
 18 THE COURT: Sustained.
 19 BY MR. HOWES:
 20 Q. You sent two bags and one shirt for testing; is that
 21 correct?
 22 A. And the video tapes.
 23 Q. And the video tapes?
 24 A. Correct. And the jacket.
 25 Q. And the jacket. Now, let me take you to March 19th, 2001.

1 A. The First Southern robbery, the Bank of America robbery,
 2 and -- I don't know. There may have been two pictures from one
 3 robbery.
 4 Q. Okay. Now, by this time, you were getting a little bit of
 5 heat from your boss to solve this case, right?
 6 A. In a -- I know I testified to that at the Grand Jury, but
 7 in a -- not in a threatening way.
 8 Q. I wasn't implying that your boss was threatening you, but
 9 you were getting some heat to get this matter settled up,
 10 right?
 11 A. No, it was more -- he's a -- he's investigated robberies
 12 for over thirty years in his bureau career.
 13 Q. Okay.
 14 A. And it was more along the lines of, well, Lewis, you know,
 15 when are you going to solve this thing.
 16 Q. Okay. Now, you're looking, when you talked to Ms. Morris,
 17 for information that will allow you to get a search warrant,
 18 arrest warrant or both, right?
 19 A. Well, I didn't have any expectations. I was just -- I was
 20 going to interview her and see where that led.
 21 Q. See where that led. But when she looked at the photos that
 22 day, she never ever said, that is Wilbert McKreith, like she
 23 did in this courtroom, did she?
 24 A. That's correct.
 25 Q. When was the first time that Kelly Morris ever said, in

1 Do you remember that day?
 2 A. Yes.
 3 Q. On that day, you met with Ms. Morris?
 4 A. Correct.
 5 Q. Identified yourself?
 6 A. Yes.
 7 Q. Probably showed her your badge, because that's your
 8 procedure?
 9 A. My identification.
 10 Q. And when you met with Ms. Morris, you told her the purpose
 11 of your investigation?
 12 A. Yes.
 13 Q. You were conducting an investigation of Mr. McKreith with
 14 respect to bank robberies, correct?
 15 A. Correct.
 16 Q. Ms. Morris told you that she was familiar with
 17 Mr. McKreith?
 18 A. Yes.
 19 Q. You showed her some pictures?
 20 A. Yes.
 21 Q. How many?
 22 A. Three, maybe.
 23 Q. Do you remember of which particular incidents those were?
 24 A. Yes.
 25 Q. Which ones?

1 your presence, the person in those photographs is Wilbert
 2 McKreith?
 3 A. I don't think she ever used those words. She said it
 4 looked like Wilbert McKreith.
 5 Q. Okay. So the first time Kelly Morris ever said, that is
 6 Wilbert McKreith in those photographs, was in this courtroom
 7 before this jury; is that correct?
 8 A. Well, it may have been when we met with her in preparation
 9 for trial.
 10 Q. Within the last week or two?
 11 A. Or earlier.
 12 Q. Okay.
 13 THE COURT: Would this be a good place to stop?
 14 MR. HONES: Yes, sir.
 15 THE COURT: All right. Let's take our morning recess
 16 now.
 17 Ladies and gentlemen, we'll be in recess for fifteen
 18 minutes.
 19 Mrs. Savlov, I got your note, so we'll be more than
 20 happy to accommodate you tomorrow so you can get your husband
 21 to the doctor.
 22 JUROR NUMBER 4: Thank you.
 23 THE COURT: How much longer will you be, do you think,
 24 Mr. Howes?
 25 MR. HONES: Half hour, forty-five minutes at the most.

1 THE COURT: Okay. Step down, sir.

2 [Brief recess].

3 THE COURT: Be seated, Mr. Lewis.

4 Go ahead, sir.

5 MR. HOWES: Thank you, Your Honor.

6 BY MR. HOWES:

7 Q. Agent, let me stay with you on March 19th of last year. At
8 that time, we were talking to Kelly Morris. She gave you a
9 description of how Mr. McKreith would normally dress, correct?

10 A. Yes.

11 Q. At that time, she said that he usually wore the same style
12 of clothing, black pants, a black T-shirt and black shoes?

13 A. Correct.

14 Q. And she said he would frequently wear the same style on the
15 times that she saw him, correct?

16 A. Yes.

17 Q. And you've testified to that before, correct?

18 A. Yes.

19 Q. I mean, I'm really quoting what you said before here,
20 right?

21 A. Yes.

22 Q. Glaringly absent from what was said by Ms. Morris to you is
23 any mention of a plaid shirt, correct?

24 A. She didn't -- on the 19th, I don't believe she -- she did
25 not mention that. But on other occasions, she said she has

1 seen him wearing a plaid shirt.

2 Q. On other occasions?

3 A. Yes.

4 Q. Okay. Is that in preparation for trial?

5 A. No, it was -- it might have been the 20th, the March 20 --

6 Q. Okay.

7 A. -- 2001.

8 Q. All right. But on the, but on the 19th, she didn't mention
9 anything about plaid shirts?

10 A. Correct.

11 Q. Okay. And --

12 MR. HOWES: May I approach, Judge?

13 THE COURT: Yes, sir.

14 BY MR. HOWES:

15 Q. Let me have you look at Exhibit 15. Ask you if you
16 recognize that particular photograph.

17 A. You showed me a black and white copy before.

18 Q. Okay. Have you ever seen that -- the color copy?

19 A. No.

20 Q. Do you know where it came from?

21 A. No.

22 Q. In the course of your work as an FBI agent dealing with
23 bank robberies, do you try to keep abreast of fashion and
24 clothing styles of individuals?

25 A. Not really, no.

1 Q. Okay. So that particular item has no significance to you?

2 A. No.

3 Q. Were any attempts made by anyone involved in law
4 enforcement to get fingerprints off of this item, Government's
5 Exhibit 18 and 18-A?

6 A. No.

7 Q. And the surface is conducive to fingerprinting, correct?

8 A. Yes.

9 Q. And you have at times been involved in investigations where
10 fingerprints have come from items such as this, correct?

11 A. Yes.

12 Q. And the same is true with respect to item 17 and 17-A,
13 correct?

14 A. Correct.

15 Q. Now, no attempt was made on those two, but an attempt was
16 made on this one?

17 A. Yes.

18 Q. What was done with the T-shirts that were found at the 69th
19 Terrace address?

20 A. Stored in our office, in our evidence facility.

21 Q. Still there?

22 A. Yes.

23 Q. How about the pants?

24 A. Yes.

25 Q. How about the items seized from the defendant's house where

1 he lived on Percival?

2 A. Yes.

3 Q. Okay. Did you -- you mentioned yesterday you conducted
4 some surveillance of the defendant?

5 A. Yes.

6 Q. We talked about the 20th of March of this year?

7 A. Yes.

8 Q. Okay. What other days did you conduct surveillance?

9 A. I saw -- myself and my partner from the Sheriff's Office
10 robbery division saw Mr. McKreith in the Coconut Grove area a
11 few days before he was arrested.

12 Q. In the area?

13 A. Driving, yes.

14 Q. Driving a vehicle?

15 A. Yes.

16 Q. Was he alone or with others?

17 A. He was alone.

18 Q. Okay. And that -- I mean, you just saw him driving?

19 A. Yes.

20 Q. Okay. And that's the only other surveillance that was
21 done?

22 A. Of the defendant, yes.

23 Q. Okay. Would it be fair to say that that would be the first
24 time that you came into -- that you physically saw
25 Mr. McKreith?

1 A. No.
 2 Q. I mean, on the 20th of March?
 3 A. Yes.
 4 Q. And then a few days before his arrest driving around in
 5 Coconut Grove?
 6 A. Yes.
 7 Q. And then the third time was the day of his arrest?
 8 A. Yes.
 9 Q. Did you have aerial surveillance?
 10 A. No.
 11 MR. HOWES: I don't have any other questions, Judge.
 12 Thank you.
 13 THE COURT: Redirect, Mr. Stefin?
 14 MR. STEFIN: Thank you, Your Honor.
 15 REDIRECT EXAMINATION
 16 BY MR. STEFIN:
 17 Q. Agent Lewis, there where some questions asked of you
 18 regarding an address on Percival Avenue?
 19 A. Yes.
 20 Q. And a search warrant was conducted at that location as
 21 well?
 22 A. Yes.
 23 Q. And how did that address come to your attention as to
 24 whether or not it had some possible connection to the
 25 defendant?

1 A. I believe that was the address he gave Ms. Morris.
 2 Q. Do you know whether or not he was providing that address to
 3 Ms. Morris in reporting to her?
 4 A. I believe he was, yes.
 5 Q. And what was that location in Percival Avenue, what did it
 6 consist of?
 7 A. It was a, it was a house in the Grove section of Miami.
 8 But where Mr. McReith's belongings were, from my understanding
 9 of the search, it was a very, very --
 10 MR. HOWES: Objection, Judge, as to what his
 11 understanding was.
 12 THE COURT: Sustained.
 13 BY MR. STEFIN:
 14 Q. Did you go to the location?
 15 A. I drove by it.
 16 Q. Did you ever go inside the location?
 17 A. No.
 18 Q. Were there any items of evidentiary value found at that
 19 location?
 20 MR. HOWES: Objection, Judge. That calls for a
 21 conclusion.
 22 THE COURT: Sustained.
 23 BY MR. STEFIN:
 24 Q. Were there any items seized as a part of this case that
 25 were taken into possession by the FBI?

1 A. Yes.
 2 Q. And turned over to the you?
 3 A. Yes.
 4 Q. Who was the owner of that house; do you recall?
 5 A. I believe it was an elderly couple. I don't know their
 6 name now.
 7 Q. But you searched -- you also obtained a search for the
 8 Northwest 69th Terrace --
 9 A. Yes.
 10 Q. -- where all of the items were seized, correct?
 11 A. Yes.
 12 Q. And how did that address come to your attention?
 13 A. Through surveillance.
 14 Q. Surveillance physically by yourself or by other agents of
 15 the FBI?
 16 A. By other agents.
 17 Q. And for approximately how long of a period of time was
 18 there surveillance conducted on that particular residence?
 19 A. Two to three weeks.
 20 Q. And was the defendant observed coming and going from that
 21 residence during that period of time?
 22 MR. HOWES: Objection. Hearsay. Leading.
 23 THE COURT: Sustained.
 24 BY MR. STEFIN:
 25 Q. Was the defendant observed going to any other residence,

1 other than the 69th Terrace residence, during that two to three
 2 week period of time?
 3 MR. HOWES: Objection. Hearsay, Judge.
 4 THE COURT: Sustained.
 5 BY MR. STEFIN:
 6 Q. Did you know anything about Mr. Amira at the time the
 7 search warrant was conducted?
 8 A. No.
 9 Q. Or the circumstance under which the house was purchased by
 10 the defendant?
 11 A. No.
 12 Q. Was there any indication that there was anyone else living
 13 at that residence, the 69th Terrace residence, other than the
 14 defendant?
 15 MR. HOWES: Objection. Calls for a conclusion.
 16 Speculation.
 17 THE COURT: Overruled.
 18 THE WITNESS: No.
 19 BY MR. STEFIN:
 20 Q. In fact, there were -- there was -- strike that.
 21 Now, there was a photograph on the wall which had some
 22 individuals. Well, there was a photograph on the wall, as
 23 indicated in Government's Exhibit 10-C7
 24 A. Yes.
 25 Q. And we're talking about the 69th Terrace address?

1 A. Correct.
 2 Q. Do you know who the individuals are that are depicted in
 3 that photograph on the wall?
 4 A. One of the individuals is an associate of Mr. McKreith's,
 5 Mr. McTaggart. I believe the elderly lady is his mother.
 6 Q. Whose mother?
 7 A. Mr. McKreith's mother. And I don't know who the other
 8 people are.
 9 Q. And do you know what relationship the defendant had with
 10 Mr. McTaggart?
 11 MR. HOWES: Objection, Judge.
 12 MR. STEFIN: I'm asking if he knows.
 13 THE COURT: Overruled.
 14 THE WITNESS: They were friends.
 15 BY MR. STEFIN:
 16 Q. And other than the person you identified as possibly the
 17 defendant's mother, do you know what relationship the defendant
 18 may have had with the other folks depicted in those
 19 photographs?
 20 A. No.
 21 Q. Did you find photographs in the defendant's car of any of
 22 these same individuals that are on the wall in the defendant's
 23 house?
 24 A. Yes.
 25 Q. Would you say -- and again, more than one picture?

1 BY MR. STEFIN:
 2 Q. Now, some of the photographs even have dates on them; is
 3 that correct?
 4 A. Yes.
 5 Q. From your investigation, do you happen to know how old
 6 Mr. McTaggart is?
 7 MR. HOWES: Judge, objection. It's irrelevant.
 8 THE COURT: Overruled.
 9 THE WITNESS: Yes.
 10 BY MR. STEFIN:
 11 Q. Approximately how old?
 12 A. I think he's sixteen or seventeen.
 13 Q. Showing you what's been marked as Government's Exhibits 27,
 14 28, and 29. Were these photos also found in the pack of photos
 15 in the defendant's car?
 16 A. Yes.
 17 Q. And do those photographs also depict the defendant with the
 18 person described as McTaggart?
 19 A. Yes.
 20 MR. STEFIN: Your Honor, at this time, we would move
 21 into evidence Government's Exhibits 27, 28, and 29.
 22 MR. HOWES: Same objection as previously noted and
 23 irrelevant, Your Honor.
 24 THE COURT: 27 --
 25 MR. STEFIN: 28 --

1 A. I think so, yes.
 2 Q. There's a child. More than one picture of the child?
 3 A. Yes.
 4 Q. And, in fact, showing you Government's Exhibit 21, this is
 5 a picture of one of the photos that was in the defendant's car?
 6 A. Yes.
 7 Q. Do you see whether or not some of the individuals depicted
 8 on the photograph on the wall are depicted in that photograph?
 9 A. Yes, I do. The child, who I believe to be his mother, and
 10 Mr. McTaggart. It appears to be a family photo.
 11 Q. And were there other photographs of Mr. McTaggart that were
 12 in the pouches of photographs in the car?
 13 A. Yes.
 14 Q. By the way, with respect to Government's, with respect to
 15 Government's Exhibit 21, do you know where this photograph was
 16 taken?
 17 A. I believe it was taken in New York.
 18 Q. Well, let me ask you this:
 19 Looking at the furnishings in the house, does that
 20 appear to be the residence of the defendant, McKreith?
 21 A. No.
 22 Q. And why do you believe it was taken in New York?
 23 MR. HOWES: Objection, Judge.
 24 THE COURT: Sustained.
 25

1 THE COURT: 28.
 2 MR. STEFIN: -- and 29.
 3 THE COURT: Overruled. They'll be received.
 4 [Government Exhibit Numbers 27, 28, and 29 were
 5 marked and received in evidence].
 6 BY MR. STEFIN:
 7 Q. By the way, in Government's Exhibit Number 28, at least
 8 according to the camera that -- using the -- taking the
 9 picture, what was the date that photograph was taken?
 10 A. October 21st, 2000.
 11 Q. And does that depict, appear to depict the defendant's
 12 Mercedes in the background?
 13 A. Yes.
 14 Q. And you can see what the paint -- condition of the front of
 15 the car is in that photo on October of 2000?
 16 A. Yes.
 17 Q. And does it appear from that photo that the defendant and
 18 McTaggart appear to dress in similar clothing?
 19 MR. HOWES: Objection, Judge.
 20 THE COURT: Sustained.
 21 MR. STEFIN: May I publish these, Your Honor?
 22 THE COURT: You may, sir.
 23 BY MR. STEFIN:
 24 Q. Now, you were asked questions about how many photographs.
 25 And you never sat down and counted out all the packets of

1 photos and how many that were in each packet?
 2 A. That's correct.
 3 Q. At least as you sit here right this minute. But you
 4 estimated there were about maybe perhaps a hundred and fifty,
 5 maybe more photographs?
 6 A. Yes.
 7 Q. Now of those, what percentage of them were pictures of the
 8 defendant himself, approximately, give or take?
 9 A. Five or ten percent, maybe.
 10 Q. Which would mean that most of the pictures were of other
 11 people or other things?
 12 A. Yes.
 13 Q. Now, you've heard the testimony and gathered evidence
 14 regarding the three pieces of property that the defendant
 15 owned, correct?
 16 A. Yes.
 17 Q. And you testified and you were asked questions about
 18 whether there was any money found on the defendant's person,
 19 and you testified there was forty-one dollars and eighty-two
 20 cents, something like that?
 21 A. Something like that.
 22 Q. And there was no money found at the 69th Terrace address?
 23 A. Correct.
 24 Q. Not a penny?
 25 A. No.

1 did you ever find any other money in any other place pertaining
 2 to the defendant, that you could identify with the defendant?
 3 A. No.
 4 Q. Do you know then how the defendant was making mortgage
 5 payments on these pieces of property?
 6 A. No.
 7 Q. Do you know whether or not the defendant kept his money in
 8 a third location?
 9 A. I don't know if he did or not.
 10 Q. Now, with respect to some records that were shown to you
 11 regarding payments the defendant received for, possibly for
 12 rent of one of the properties?
 13 A. Yes.
 14 Q. Do you remember which property it was that was shown to
 15 you, as far as the records that were shown to you, that the
 16 defendant was -- may have been receiving rent payments?
 17 A. I think it was the Brooker Street address and the 1532
 18 address.
 19 Q. And there's no evidence that the defendant's ever rented
 20 out Northwest 69th Terrace, is there?
 21 A. That's correct.
 22 Q. Now, the records show -- or the defense showed you some
 23 records showing receipt of payments of seven hundred and fifty
 24 dollars a month.
 25 Do you recall whether or not the records also showed

1 Q. And we have records from the bank accounts belonging to the
 2 defendant?
 3 A. Yes.
 4 Q. By the way, one of the accounts -- wasn't one of the
 5 accounts at First Union was the account of McKreith and Company
 6 and one was the personal account of the defendant?
 7 A. I'd have to take a look at it.
 8 Q. Let me show you Government's Exhibit 105, the First Union
 9 Bank account. If you look at the first page, Page 1 and Page
 10 2, look to see under whose name that account is titled?
 11 A. McKreith and Company.
 12 Q. With the signatory, the person with the signature authority
 13 being Wilbert McKreith?
 14 A. Yes.
 15 Q. And the second account was the personal account,
 16 Government's Exhibit 104?
 17 A. That's correct.
 18 Q. And those are the accounts you testified previously had a
 19 total balance -- I think one of them had a balance of nine
 20 cents at the end?
 21 A. Yes.
 22 Q. And the other one had what, was it fifty-three dollars?
 23 A. I think fifty-two forty-eight, something like that.
 24 Q. So besides fifty-two dollars and forty-eight cents in a
 25 bank account and forty-one dollars on the defendant's person,

1 how much the defendant would have been paying in the mortgage
 2 payments for the property?
 3 A. No.
 4 MR. STEFIN: Sorry, Your Honor. If I could just have
 5 a moment.
 6 BY MR. STEFIN:
 7 Q. Let me show you what I'm marking as Government's Composite
 8 Exhibit 115, and ask you if you recognize this packet of
 9 documents?
 10 A. Yes.
 11 Q. And were those some of the real estate records that were
 12 found in the defendant's car?
 13 A. Yes.
 14 Q. I put my thumb at a particular page there, part of the
 15 composite. Does it indicate mortgage payment, the amount of
 16 mortgage payment that was due and payable on 1532 Northwest
 17 68th Street?
 18 A. Yes.
 19 Q. And how much was the monthly mortgage payment for that
 20 property?
 21 A. Six hundred and thirty-two dollars and ninety-one cents.
 22 Q. So if the defendant was collecting seven fifty and paying
 23 six thirty-two, then the profit built into this equation would
 24 be approximately how much?
 25 A. A little over a hundred dollars.

1 Q. Your math's not so bad.

2 Now, with respect to the property, the 1540 Northwest
3 69th Terrace, the house that was searched, was there also --
4 again, was there also a packet of documents pertaining to that
5 particular property?

6 A. Yes.

7 Q. Let me show you what's been marked for identification as
8 Government's Exhibit 110 Composite, and ask you if you can
9 identify this?

10 A. Yes.

11 Q. And where was 110 Composite found or recovered?

12 A. I believe from the house.

13 Q. And I marked as Government's Exhibit 110-A and 110-B
14 certain tax forms. I put them in front. I'm showing you
15 what's been marked as Government's Exhibits 110-A and 110-B.

16 Are these a part of the records that were seized in
17 the packet of documents found in the defendant's residence?

18 A. Yes.

19 MR. STEFIN: Your Honor, at this time, we would offer
20 Government's Exhibits 110-A and 110-B into evidence.

21 MR. HOWES: Same objection.

22 THE COURT: Overruled. It will be received.

23 [Government Exhibit Numbers 110-A and 110-B were
24 marked and received in evidence].

25

1 A. Yes, Wilbert McKreith, 1540 Northwest 69th Terrace, Miami,
2 Florida, 33147, signed what appears to be Mr. McKreith's
3 signature.

4 MR. HOWES: Objection, Judge. Move to strike the last
5 comment.

6 THE COURT: The objection will be sustained. The last
7 part will be stricken.

8 BY MR. STEFIN:

9 Q. Does it purport to have his signature on it?

10 A. Yes.

11 Q. And under the signature does it have a typed name?

12 A. Yes, Wilbert McKreith.

13 MR. STEFIN: Your Honor, I would offer, at this time,
14 Government's Exhibit Composite 110?

15 MR. HOWES: Same objection, Judge.

16 THE COURT: Overruled. It will be received.

17 [Government Composite Exhibit Number 110 was marked
18 and received in evidence].

19 MR. STEFIN: And I would ask permission to be allowed
20 to publish 110-A and 110-B?

21 THE COURT: You may publish.

22 MR. STEFIN: May I just have a moment, please, Your
23 Honor?

24 BY MR. STEFIN:

25 Q. All right. Agent Lewis, now, you've testified that you

1 BY MR. STEFIN:

2 Q. Let me show you first Government's Exhibit 110-A. Would
3 you please tell the jury what that document is?

4 A. It's a request for copy or transcript of tax form.

5 Q. It's a -- does it appear to be an IRS form?

6 A. Yes, it is.

7 Q. And it gives the form number on the upper left-hand corner?

8 A. 4506.

9 Q. And it's a request, it's a form to the IRS, a request for
10 what now?

11 A. For a copy or a transcript of tax form.

12 Q. So it's -- all right. And does it indicate who the
13 taxpayer is making the request for tax form?

14 A. Yes, Wilbert McKreith.

15 Q. And does it give Wilbert McKreith's address on this
16 particular tax form?

17 A. 1540 Northwest 69th Terrace, Miami, Florida, 33147.

18 Q. And is that signed or purport to be signed by Wilbert
19 McKreith?

20 A. Yes, on August 30th, 2000.

21 Q. And showing you Government's Exhibit 110-B. What is this
22 form?

23 A. It's IRS Form 8821, a tax information authorization form.

24 Q. And again, does it give the name and address of the
25 requester?

1 responded to some of these bank robberies, and in other
2 instances there were other agents that responded in your
3 absence; is that correct?

4 A. Yes.

5 Q. And when you respond -- well, just let me back up a little
6 bit. Now, during the four and-a-half years that you were with
7 the bank robbery squad, approximately how many bank robberies
8 would you be responding to say on a weekly basis?

9 A. Three to five.

10 Q. And sometimes would some of -- would there be more than one
11 robbery on a particular day?

12 A. Absolutely.

13 Q. And was your particular territory confined to Broward
14 County or the entire Southern District of Florida?

15 A. Broward and Dade, to approximately 88th Street or Kendall
16 Drive.

17 Q. And if you know the answer to this question, approximately
18 how many bank robberies are committed in Broward and Dade
19 County annually, at least during the time period you were with
20 the bank robbery squad?

21 A. Two hundred annually.

22 Q. And would somebody from the FBI generally respond to each
23 of these bank robberies?

24 A. Yes.

25 Q. And there would also be state or local law enforcement that

1 would respond to these robberies as well?
 2 A. Yes.
 3 Q. And would there be instances in which the bank robbery
 4 investigation would be headed by a state agency or a local
 5 police agency as opposed to the FBI?
 6 A. No, it was, it was concurrent. But we had the lead in most
 7 cases. For instance, after 9/11 for about --
 8 Q. Well, this was before -- these robberies were before 9/11,
 9 right?
 10 A. Yes.
 11 Q. Okay. So let's stick to before 9/11.
 12 A. Okay.
 13 Q. Now, how would you describe, based on your experience, and
 14 also with reference to these particular robberies that you went
 15 to, the crime scene or the atmosphere of the crime scene when
 16 you would get there?
 17 A. Generally, local law enforcement would arrive prior to us
 18 as first responders. Once the agents would arrive at the
 19 scene, responsibilities would be delegated.
 20 I would say, okay, I'm going to interview the victim
 21 teller and maybe this witness here. Another agent would
 22 interview another witness.
 23 After the interviews were concluded, we'd say, okay,
 24 let's get a copy of the audit sheet, let's get a copy of the
 25 FDIC certificate, the police report number, the videotape,

1 A. Yes.
 2 Q. And again, would somebody try to speak to these people at
 3 the scene?
 4 A. Yes.
 5 Q. Could you tell us whether or not, again, especially with
 6 related to these, related to these bank robberies, whether
 7 these interviews were in-depth interviews of people on the
 8 scene?
 9 A. Generally, no.
 10 Q. And, in fact, again, were there other agents that did many
 11 of these interviews, including interviewing of the witnesses
 12 who testified at this trial?
 13 A. Yes.
 14 Q. And is it the obligation of agents doing an interview that
 15 they should prepare a report of their interview at some point
 16 in time?
 17 A. Yes.
 18 Q. And turn that interview report over to you?
 19 A. A copy was furnished to me, yes.
 20 Q. And would you say that -- could you say whether or not, in
 21 reviewing some of these interview reports, whether or not these
 22 interviews were in-depth?
 23 A. Some of them were not.
 24 Q. In fact, some of these interview reports consisted of just
 25 a couple of sentences?

1 perhaps do a canvas of the neighborhood.
 2 Q. And how much time do you spend at the crime scene talking
 3 to witnesses, for example?
 4 A. An hour, an hour and-a-half. It depends. I mean, I've
 5 gone to robberies where there have been -- you know, you show
 6 up at the bank and there's twenty witnesses in the lobby,
 7 customers, bank employees, tellers.
 8 Q. All right. And you would have the responsibility of trying
 9 to speak to all of these people at that time?
 10 A. Yes.
 11 Q. And would you say that the interviews are quite in-depth at
 12 that time or how would you describe the interview process?
 13 A. It really depends on, for instance, the number of witnesses
 14 that are there. If there's the victim teller and another
 15 employee, maybe no customers, you could afford to spend a
 16 little bit more time with your witness.
 17 If, you know, like I mentioned earlier, if there's
 18 fifteen to twenty people in the lobby, most of these customers
 19 generally have been waiting there, and you want to get basic
 20 information as quickly as possible.
 21 Q. All right. So approximately -- and again, were there
 22 robberies -- among these eight robberies, that there were a
 23 number of other people that were possibly in a category of
 24 being a witness, who of course have not been called to testify
 25 in this matter?

1 A. Yes.
 2 Q. Now, you were asked questions about whether or not you
 3 submitted the hats, the shirt, I guess perhaps the jacket, I
 4 don't recall, to a crime lab for say DNA analysis?
 5 A. Yes.
 6 Q. And you had testified that you didn't do that?
 7 A. Correct.
 8 Q. At any point, was there any consideration during the
 9 investigation or after the items were seized at that particular
 10 residence to send those items for such testing?
 11 A. No.
 12 Q. And why is that?
 13 A. I believe that since they were seized from Mr. McKreith's
 14 residence --
 15 MR. HOWES: Judge, I object. It calls for conclusion.
 16 Speculation.
 17 THE COURT: Overruled.
 18 THE WITNESS: Since they were -- for instance, the
 19 shirt was seized from a closet in the residence that
 20 Mr. McKreith lived in.
 21 In my mind, there was no need to establish, you know,
 22 ownership of the shirt.
 23 BY MR. STEFIN:
 24 Q. That was self-evident?
 25 A. Yes.

1 Q. And what if you found a hair in the hat that was seized at
 2 that residence, what would that establish?
 3 A. Nothing, really.
 4 Q. And what if you didn't find a hair in the hat, what would
 5 that establish?
 6 A. Nothing.
 7 Q. And if you had isolated a hair on a floor of a bank after a
 8 robbery had occurred, and you submit it to a lab and it didn't
 9 come back to the defendant, what would that establish with
 10 respect to your investigation?
 11 A. It wouldn't have changed it.
 12 Q. Was there ever any evidence that the bank robber, in any
 13 way, shook his hair or his hat or took his hat off in the bank
 14 or did anything that might indicate that one should look for
 15 hairs of the robber?
 16 A. No, during the robberies the mask was, was, was kept on.
 17 Q. Now, if the hat had been dropped outside the bank or, for
 18 example, the robbery where the dye pack went off, if the hat
 19 had been left behind, might -- in that circumstance, it might
 20 have been helpful to try to see if you could analyze the hat
 21 further?
 22 A. Sure, that's what we attempted to do with the Bank of
 23 America robbery when the gun was, and the bag was left and
 24 recovered.
 25 Q. And you did process that gun?

1 Q. And again, perhaps this is just semantics, but do you
 2 recall the precise words that she used at that time?
 3 A. I believe she said that looks like Wilbert.
 4 MR. STEFIN: One moment, please, Your Honor.
 5 THE COURT: Yes, sir.
 6 BY MR. STEFIN:
 7 Q. When you do reports or property inventory, which you submit
 8 back to the court after you've executed a search warrant, to
 9 what level of precision do you prepare these items?
 10 A. Obviously, I try to be as precise as possible. But in some
 11 of the instances, for instance, the pictures and the documents
 12 and the paperwork, there's just --
 13 Time does not allow for, you know, to itemize and
 14 count and number all of those documents, so they will be
 15 indicated as miscellaneous documents or papers.
 16 Q. So you won't make any attempt, for example, if you seize a
 17 few hundred documents, to create a catalog of each document and
 18 what it is?
 19 A. Not at that time, no.
 20 Q. And the defense attorney pointed out that apparently there
 21 was a couple of items missing from your inventory report?
 22 A. Yes.
 23 Q. One being the Sun Pass?
 24 A. Yes.
 25 Q. In fact, was the Sun Pass taken the first day you went

1 A. Yes.
 2 Q. And attempt to lift prints?
 3 A. Yes.
 4 Q. With or without success?
 5 A. Without.
 6 Q. Was there any need to take fingerprints off the guns that
 7 were found in the safe in the defendant's house?
 8 A. No.
 9 Q. Now, you testified on cross-examination that in addition to
 10 the receipts found showing cash purchases, there were also some
 11 credit card receipts?
 12 A. Yes.
 13 Q. And so -- and you testified that you seized some credit
 14 cards from the defendant?
 15 A. Yes.
 16 Q. From your investigation, do you know how the defendant
 17 qualified for credit cards based on his income or alleged
 18 employment?
 19 A. No, I do not.
 20 Q. When you met with Ms. Morris the first time, that was March
 21 19th?
 22 A. Yes.
 23 Q. Did she indicate whether or not it looked like that the
 24 robber depicted in the photographs looked like the defendant?
 25 A. Yes, she did.

1 through it or was it -- did you, did you -- let me rephrase it.
 2 Did you ever go back to the car since it was in FBI custody to
 3 retrieve additional items?
 4 A. Yes.
 5 Q. And that car remained in the FBI parking lot for a number
 6 of months?
 7 A. It's still there.
 8 Q. In outside weather conditions?
 9 A. Yes.
 10 MR. STEFIN: That's all I have on redirect.
 11 THE COURT: Anything else, Mr. Howes?
 12 MR. HOWES: Yes, please.
 13 RECROSS EXAMINATION
 14 BY MR. HOWES:
 15 Q. Ms. Morris told you that even though the subject was
 16 wearing a mask, he appeared to have the same body type as
 17 McReith?
 18 A. Yes.
 19 Q. That's what your description of her words were before,
 20 correct?
 21 A. Yes.
 22 Q. Under oath?
 23 A. Yes.
 24 Q. Sworn to before a federal magistrate judge?
 25 A. Yes.

1 Q. Now, you're not saying that DNA is a junk science; are you?
 2 A. No, sir.
 3 Q. Okay. You are saying that it can include someone as having
 4 worn a particular item of clothing?
 5 A. Yes.
 6 Q. Okay. You're just saying it doesn't exclude someone from
 7 having worn a particular item of clothing?
 8 A. Correct.
 9 Q. Okay. But inclusion is proof of something, correct?
 10 A. Yes.
 11 Q. Okay. When the interviews were not thorough, as Mr. Stefin
 12 has had you point out, you went back and conducted follow-up
 13 interviews?
 14 A. No.
 15 Q. Okay. So if you got an incomplete interview, you just
 16 lived with it the way it was?
 17 A. Yeah, sometimes that's -- you're forced to do that. Other
 18 times, you may have time to do a follow-up.
 19 Q. Well, how many times did you meet with the witnesses in
 20 this particular case before they testified here, after the date
 21 of the incident and before they got on the witness stand?
 22 How many times did you meet with Mr. Parias?
 23 A. Twice, maybe.
 24 Q. Okay. Ms. Morris?
 25 A. Two or three times.

1 A. As far as I know, yes.
 2 Q. Okay. Have you ever met with the defendant's mother?
 3 A. No.
 4 Q. Have you ever seen the defendant on a bicycle?
 5 A. No.
 6 Q. Have you ever seen the defendant on three bicycles at once?
 7 A. No.
 8 Q. How many times did you stay outside the house on 69th
 9 Terrace for more than ten minutes, or more than fifteen
 10 minutes, let's say?
 11 A. Twice.
 12 Q. When was that?
 13 A. Before he was arrested and the day of his arrest.
 14 Q. Okay.
 15 A. And on subsequent times afterwards, after his arrest.
 16 Q. After his arrest he wasn't there?
 17 A. Correct.
 18 Q. Before his arrest, you -- was not one of the times you saw
 19 him. You talked about seeing him March 20th one time driving
 20 in the Grove, and then the date of his arrest?
 21 A. Yes.
 22 Q. Okay. So this other day that you're at 69th Terrace,
 23 what's the date of that?
 24 A. It was shortly before I had the search warrant signed.
 25 Q. Okay.

1 Q. Ms. Fernandez?
 2 A. Twice.
 3 Q. And on each of those occasions, for example, you showed
 4 them photographs of vehicles, correct?
 5 MR. STEFIN: Beyond the scope, Your Honor. Objection.
 6 THE COURT: Sustained.
 7 BY MR. HOWES:
 8 Q. Did you write reports when you conducted these other
 9 interviews -- let me back up. What interviews were you
 10 referring to as not being thorough?
 11 A. Maybe some from the Commerce Bank robbery.
 12 Q. Okay. Is that the only one you can think of?
 13 A. Yes.
 14 Q. Okay. So really, we're talking about one robbery that you
 15 would have had to do follow-up on; is that correct?
 16 A. Yes.
 17 Q. Did you travel to New York with respect to this
 18 investigation?
 19 A. No.
 20 Q. Today, where are the agents who you say conducted
 21 surveillance on the 69th Terrace address?
 22 A. They're still working, most of them are.
 23 Q. With the FBI?
 24 A. Yes.
 25 Q. In the Miami field office?

1 A. I think it was early April, first few days of April maybe.
 2 Q. Sometime before April 6th?
 3 A. Yes.
 4 Q. And did you observe anyone at the house at that time?
 5 A. No.
 6 Q. And you were there for approximately fifteen minutes?
 7 A. Thereabouts.
 8 Q. Okay. And that's the only time you were there?
 9 A. Yes.
 10 Q. I asked you a question about the records of McKreith and
 11 Company being introduced, and I thought you told me they
 12 weren't, the bank records.
 13 Were they, in fact, introduced?
 14 A. Yes.
 15 Q. Okay. There's just so much evidence, we got confused on
 16 that?
 17 A. Yes.
 18 Q. Okay. Now, let me show you Government's Exhibit Number
 19 108. They had showed you 110-A and B before. And there was a
 20 date on that of August 30th, 2000, correct?
 21 A. Okay. Yes.
 22 Q. Okay. That's the same date as the closing on this
 23 particular residence, right?
 24 A. Yes.
 25 Q. Okay. So if the closing's already taken place, there

1 wouldn't be any need for any verification from the Internal
 2 Revenue Service about income, correct, if the closing's done?
 3 A. I don't know what time the closing occurred or what time
 4 those other forms were sent up.
 5 Q. Okay. But with respect to you and some of the members of
 6 the jury, the government doesn't necessarily get something done
 7 the same day that a request is made, does it?
 8 Agent, you can answer that one.
 9 A. I don't know.
 10 Q. Okay. Have you ever known the Internal Revenue Service to
 11 get something like, get a transcript out the same day that a
 12 request is dated?
 13 A. It depends on how persuasive you are on the phone, I guess.
 14 Q. You think maybe it helps if you work for the FBI?
 15 A. Yeah, it could.
 16 Q. Okay. How long did you spend inside the residence at 1540
 17 Northwest 69th Terrace on April 11th, 2001?
 18 A. Five or ten minutes.
 19 Q. And during that time you were doing what?
 20 A. I did a walk-through of the house after it had been
 21 secured. I observed the black jacket and the plaid shirt
 22 hanging in the closet, as well as all the other expensive items
 23 of audio/visual equipment that were there.
 24 Briefly talked to the agents that were going to be
 25 conducting the search and then left.

1 Q. And that's it?
 2 A. Yes.
 3 Q. Okay. And you obtained indicia of ownership of each of
 4 those items before you left, correct?
 5 A. No.
 6 Q. You obtained them later?
 7 A. Yes, once they were turned over to me.
 8 Q. Okay. Like what?
 9 A. The settlement sheets, you know, mortgage statements, that
 10 sort of thing.
 11 Q. Okay. The paperwork on the house?
 12 A. Yes.
 13 Q. Okay. And you were able to determine by whom this plaid
 14 shirt that you say was hanging in the closet was purchased?
 15 A. Yes.
 16 Q. You were able to determine when that shirt was purchased?
 17 A. By --
 18 Q. By whom it was purchased?
 19 A. Oh, no, no. I thought you meant what type of company.
 20 Q. No. By whom it was purchased?
 21 A. No.
 22 Q. When it was purchased?
 23 A. No.
 24 Q. Where it was purchased?
 25 A. No.

1 Q. Where it was worn?
 2 A. No.
 3 Q. Who it was worn by?
 4 A. After -- yeah, I ultimately determined who it was worn by.
 5 Q. You came to that conclusion?
 6 A. Yes.
 7 Q. Okay. That's your conclusion?
 8 A. Yes.
 9 MR. HOWES: Thank you. That's all I have, Judge.
 10 THE COURT: Okay. Mr. Lewis, you may step down, sir.
 11 THE WITNESS: Thank you, sir.
 12 THE COURT: Who is your next witness, Ms. Mitrani or
 13 Mr. Stefin?
 14 MR. STEFIN: Our next witness would be Richard Vorder
 15 Bruegge.
 16 THE COURT: Okay. Members of the jury, the next
 17 witness is --
 18 He's the expert witness?
 19 MR. STEFIN: Yes.
 20 MS. MITRANI: Yes, Your Honor.
 21 THE COURT: The next witness will be an expert
 22 witness. And in order to examine this gentleman, we're going
 23 to have to -- I said we, they're going to have to set up a
 24 bunch of charts and et cetera, and that's going to take a
 25 little bit of time to set up.

1 So we'll recess for lunch early and come back early so
 2 that during the lunch recess, the government can proceed to get
 3 ready for the presentation of this witness.
 4 We'll be in recess until 1 o'clock. Please come back
 5 at 1 o'clock and we'll proceed with the testimony of this
 6 gentleman at that time.
 7 Thank you for your attention and your patience.
 8 Court's in recess until 1:00 p.m.
 9 [Jury leaves the courtroom].
 10 THE COURT: This is the last witness for the United
 11 States?
 12 MR. STEFIN: Yes, it is.
 13 THE COURT: You should be ready to go, Mr. Howes.
 14 MR. HOWES: Yes, Your Honor. Judge, I have an -- are
 15 they --
 16 THE COURT: They're gone.
 17 MR. HOWES: Okay. I have an objection to the
 18 testimony that the government is about to present.
 19 And in your gatekeeping role under 104 and under
 20 702/703, I believe that the government has to lay a sufficient
 21 predicate for the introduction of this particular testimony
 22 concerning both the process that was done and the foundation
 23 for this type of evidence to be introduced.
 24 And so I would request a Daubert inquiry -- or Daubert
 25 hearing with respect to these matters.

1 THE COURT: Okay.

2 MR. STEFIN: Judge, this would have been the type of
3 motion that should have been filed pretrial. We don't -- well,
4 we have some research, but we haven't anticipated any type of
5 objection with respect to this type of issue, and I don't think
6 it's really appropriate or fair that we do this inquiry.

7 I will say that the substantial portion of the
8 government's case is based on this witness' testimony. And I
9 propose that the Court can make that inquiry as the witness
10 testifies through the examination of the government and at the
11 moment when the government seeks to qualify him as an expert in
12 his field.

13 Obviously, if the Court is going to exclude his
14 testimony, then that pretty much excludes the case anyway.

15 THE COURT: That's right.

16 MR. STEFIN: So I don't see why we need to have a
17 pre-witness proceeding to do that, because there's only two
18 outcomes if we do that; one is the Court's going to let him
19 testify anyway, or the Court's going to exclude him.

20 And if the Court excludes him, whether it's before he
21 testifies or while he's testifying, the result is basically the
22 same.

23 THE COURT: Which would be?

24 MR. STEFIN: Which would be that the substantial
25 portion of the evidence that links this defendant to the crime

1 would be excluded.

2 THE COURT: Do you agree with that, Mr. Howes?

3 MR. HOWES: I agree, Judge, that you would be in a
4 position to grant a Rule 29 if they don't get the evidence in.
5 And I don't concede that you would not grant the Rule 29 if
6 they do get --

7 THE COURT: In any event --

8 MR. HOWES: -- it in.

9 THE COURT: I understand.

10 MR. STEFIN: And the problem being that any other
11 ruling, we don't have an opportunity to -- as we would in a
12 pretrial proceeding.

13 If the Court were to rule against us pretrial, if the
14 defendant had filed his motions, then that would have given us
15 some type of remedy, whereas we are provided with no remedy
16 here, except to proceed with trial.

17 MR. HOWES: Judge, Daubert says that your -- Daubert
18 and Kumho Tire say that it is your obligation as the gatekeeper
19 in allowing this evidence in to make these determinations.

20 It is a trial time determination to be made. It's not
21 a pretrial motion, like a motion to suppress. The government,
22 I don't believe, could appeal this in any event. This is an
23 evidentiary ruling.

24 And the question is whether or not this witness can
25 give qualified and legally sufficient evidence to present to

1 the jury.

2 THE COURT: I agree with you.

3 What we will do, Mr. Stefin, is we will call the
4 witness at 1 o'clock, and then you can attempt to lay a
5 predicate as to the admissibility of this expert testimony,
6 considering what Daubert says.

7 And before we get into the specifics of the witness'
8 opinion with regard to the exhibits in evidence, we have to
9 qualify him. We have to qualify the witness to testify based
10 upon accepted scientific principles.

11 I don't know if those are the magic words, but that's
12 the idea. So, think you can do that?

13 MR. STEFIN: Well, I have to look at Daubert again and
14 see what the --

15 THE COURT: I mean, he can't come in here and say, I
16 had a dream and based upon that --

17 MR. STEFIN: We're going to go beyond, we're going to
18 go well beyond that.

19 THE COURT: All right.

20 MR. STEFIN: But I think we're fine.

21 THE COURT: Okay. 1 o'clock. We'll be in recess
22 until then.

23 [Luncheon recess]

24 THE COURT: Who's going to examine this witness,
25 Mr. Stefin?

1 MR. STEFIN: That will be me, Your Honor.

2 THE COURT: All right.

3 MR. STEFIN: Judge, if I may, after further reflection
4 on this matter and --

5 THE COURT: After further review, the ruling on the
6 field, or what --

7 MR. STEFIN: As the Court may have been initially
8 inclined to do, we would ask that we be permitted to prequalify
9 this witness in his scientific techniques to the Court outside
10 the presence of the jury.

11 I think it will allow us to ask questions in a method
12 and manner different than I might do it in front of the jury,
13 and get into areas that I don't think the jury needs to concern
14 itself with. And I just think it would be helpful to us if we
15 could do that.

16 And then, if there's a voir dire, then he can conduct
17 his voir dire and so forth.

18 MR. HOWES: Seems like my request for you to make that
19 preliminary determination, Judge.

20 THE COURT: How long is that going to take?

21 MS. MITRANI: I think we can do it in twenty minutes.

22 THE COURT: Twenty minutes. Okay.

23 Madam Clerk, would you tell the members of the jury
24 that the Court has to consider some testimony outside of their
25 presence at this time, and that this is going to take awhile.

1 They're free to leave and come back to the jury room
 2 at 2 o'clock, or they can stay in the jury room. But I don't
 3 want to keep them in there unless they have to.

4 And I'm very sorry, but this just came up, and we
 5 didn't know it was going to come up until right now. Would you
 6 tell them that.

7 THE CLERK: All right.

8 THE COURT: Call your witness, Mr. Stefin.

9 RICHARD VORDER BRUEGGE, GOVERNMENT'S WITNESS, SWORN.

10 THE COURT: Please be seated, sir. State your full
 11 name and spell your last name.

12 THE WITNESS: My name is Richard W. Vorder Bruegge.
 13 The last name, Vorder Bruegge, is two words. First word,
 14 Vorder, is spelled V, as in Victor, O-R-D, as in David, E-R.

15 Second word, Bruegge, is spelled capital B, as in
 16 baker, R-U-E-G-G-E.

17 THE COURT: Okay. Mr. Stefin, you may inquire of this
 18 witness.

19 MR. STEFIN: Thank you, Your Honor.

20 VOIR DIRE EXAMINATION

21 BY MR. STEFIN:

22 Q. Mr. Vorder Bruegge, by whom are you employed?

23 A. The Federal Bureau of Investigation.

24 Q. And how long have you been with the FBI?

25 A. It will be eight years next month.

1 photograph depicts.

2 The second type of examination involves the comparison
 3 of either two photographs, objects or people depicted in one
 4 photograph with an object or person depicted in another
 5 photograph, or it could involve the comparison of the actual
 6 physical item of evidence with a photograph that may or may not
 7 depict that object.

8 The third type of examination is photogrammetry, which
 9 is obtaining dimensional information from photographs. And the
 10 fourth type of examination is image manipulation, detection,
 11 and/or authentication of photographs.

12 Q. All right. With respect to these four areas, would it be
 13 fair to say that in this particular case, we are really
 14 primarily focused on image enhancement and comparison analysis?

15 A. That is correct.

16 Q. With respect to that first area, image enhancement, what is
 17 the science or technology that's behind image enhancement?

18 A. Well, basically, since photography was created,
 19 photographers have been working on ways to improve the clarity
 20 of details in their pictures or adjust the visibility of
 21 features in pictures through image enhancement techniques.

22 Over the last twenty years the largest growth in that
 23 area has actually been in digital image processing, in which
 24 digital imaging techniques are used to improve the visibility
 25 or clarity of features in an image.

1 Q. And in those eight years, are you assigned to any
 2 particular unit or department within the FBI?

3 A. Yes. When I was hired by the FBI, I was brought into the
 4 FBI laboratory, in a unit called the special photographic unit.

5 Two years ago, that component of the unit that I was
 6 brought into was transferred to within and merged with another
 7 unit, which is currently called the forensic audio, video and
 8 image analysis unit.

9 Q. All right. What is your official title with the FBI?

10 A. My official job description is photographic technologist,
 11 but my functional title is examiner of questioned photographic
 12 evidence.

13 Q. All right. And you say that you've been doing this for
 14 approximately eight years now?

15 A. I have been working in the same field for the last eight
 16 years, yes, sir.

17 Q. Could you explain what the field of forensic photographic
 18 analysis entails?

19 A. The field of forensic photographic analysis involves the
 20 scientific and technical analysis of photographic evidence.
 21 There are four basic types of examinations that one conducts in
 22 that field.

23 The first type is image enhancement, basically
 24 improving the visibility of details in a photograph, videotape
 25 or digital image in order to learn more about what the

1 Q. And what is your training and background which qualifies
 2 you in forensic photo analysis with respect to the image
 3 enhancement?

4 And then we'll get to comparison analysis in a second.
 5 A. Well, in 1985, I began a graduate program in geological
 6 sciences, in which I was examining radar data of the planet
 7 Venus.

8 We used computer enhancement techniques to improve the
 9 visibility of the features on the planet, and not just on
 10 Venus.

11 But in my course work, I also did digital image
 12 enhancement of pictures of the Earth, the moon, Mars, other
 13 planets, basically to extract more image detail from the, from
 14 the pictures.

15 During the course of my graduate program from 1985
 16 through 1990, I was basically -- I would do image enhancement
 17 almost on a daily basis.

18 From 1990 to --

19 Q. And that was during your graduate years?

20 A. That was during my graduate years.

21 Q. Where -- by the way, where did you get your graduate degree
 22 and in what field?

23 A. I have a Master's and a Ph.D. in geological sciences from
 24 Brown University in Providence, Rhode Island.

25 Q. All right. And then after 1990, were you involved in image

1 enhancement analysis in your career?
 2 A. Yes. From 1990 through 1994, I was employed as a
 3 contractor for NASA. My primary duties then were to assist
 4 NASA in developing spacecraft missions to other planets and
 5 solar system objects.

6 But during that time, I was also awarded a grant as
 7 part of the Venus data analysis program that involved further
 8 image enhancement activities and examination of geological
 9 features on the planet Venus.

10 Q. All right. Let's, let's, let's -- bring us more up to
 11 related to the present, to this case, and the types of analyses
 12 that you performed.

13 And, again, with respect to image analysis --
 14 enhancement, photographic image enhancement, what is your
 15 training that you have with respect to photography and the
 16 ability to enhance either still photos or videotapes?

17 A. Upon entering the FBI laboratory in 1995, I was enrolled in
 18 a program developed within the FBI laboratory for the purpose
 19 of training its forensic photographic examiners.

20 That training included basic courses in photography,
 21 surveillance photography, laboratory forensic photography, as
 22 well as other specialized courses in digital imaging, digital
 23 image processing, video processing.

24 And some of those classes took place at locations such
 25 as the Rochester Institute of Technology in Rochester, New

1 York, as well as the Sony Institute in San Jose, California.
 2 Q. And what are some of the techniques -- and, again,
 3 specifically with this case -- techniques and image enhancement
 4 with respect to video, videotaped recordings of say, for
 5 example, bank robberies?

6 A. Well, the techniques involve everything from digitizing
 7 analog video signals, that is, converting them from a videotape
 8 to a computer image, to --

9 Q. And how do you do that?

10 A. That's basically a process that uses something that's
 11 frequently called a digitizer board, in which the electronics
 12 of the system sample the analog video signal and create a
 13 representation of the picture, the TV picture, if you will,
 14 onto a computer picture.

15 Q. And by doing that, what are you able to accomplish?

16 A. Basically, the purpose behind that is to enable, permit one
 17 to use computer digital enhancement techniques to improve the
 18 visibility of features from the videotape.

19 Q. Enhancement techniques consisting of what types of
 20 processing?

21 A. That can include typically techniques that one might use in
 22 a photographic dark room, brightening areas that appear dark,
 23 darkening areas that may appear overly bright, increasing the
 24 sharpness of features so that small details may be more
 25 visible.

1 Q. How about the removal of interference, visual
 2 interferences?

3 A. That can be done. It wasn't necessary in this case.

4 Q. Okay. So that was not done in this case?

5 A. It was not done in this case.

6 Q. So specifically to this case, what type of enhancement was
 7 performed, the brightness --

8 A. Brightness and contrast adjustments and feature sharpening.

9 Q. All right. And were these processes -- are these processes
 10 well recognized in the scientific community with respect to the
 11 science of photography?

12 A. Absolutely.

13 Q. And how long has the digitizing process been in existence,
 14 to your knowledge?

15 A. Well, the photographs -- the process of transmitting images
 16 electronically -- actually, images have been transmitted
 17 electronically since the times of telegraph operators.

18 The big growth in digital image processing and the use
 19 of digital transmission techniques really dates back to the
 20 space program, 1960s.

21 Q. All right. So with respect to the enhancement techniques,
 22 again, are they, and with respect to the FBI's forensic photo
 23 laboratory, is this something that's done on a regular basis
 24 with the lab?

25 A. Everyday.

1 Q. And how many times have you yourself been involved in image
 2 enhancement with respect to cases that you have worked over the
 3 eight years?

4 A. How many cases or how many times I've enhanced images?

5 Q. How many times have you enhanced images?

6 A. Thousands.

7 Q. Now, with respect to the comparison analysis process, could
 8 you explain to the Court what that entails?

9 A. Well, basically, the photographic comparison process is the
 10 same comparison process that a fingerprint examiner or a shoe
 11 print examiner uses.

12 It involves first the observation of characteristics
 13 in a questioned item of evidence, in this case a videotape
 14 image.

15 One observes specific features on the object of
 16 interest, makes notes about what is seen, then will observe,
 17 make observations of the known object of interest, for
 18 instance, a shirt, and then conduct a comparison of the
 19 observations on the questioned items, such as the photograph,
 20 versus the known item, for example, the shirt.

21 Once that process is completed, it is -- the
 22 observations are compared to see whether the features appear to
 23 be the same or whether they are apparent differences.

24 If there are apparent differences, then that may be
 25 due to differences in such things as differences in cameras,

1 lighting, or other effects that may come into play.
 2 The resolution of the image may not be sufficient to
 3 observe certain features. If differences are noted and can be
 4 explained in that way, as being due to some of these overriding
 5 concerns, then one proceeds to examine more closely the
 6 specific similarities and differences to try and determine if
 7 it's possible to say that there are or are not differences.

8 Q. All right. So, again, does a lot of this involve,
 9 basically, naked observation, looking at the photograph or
 10 still photo of a video frame?

11 A. Yes. It can -- the basics of observation involve
 12 visually inspecting the evidence. However, the knowledge, the
 13 part that involves knowing if the camera, for example, could
 14 cause a difference in the visibility, will involve, in some
 15 cases, actually using the same type of system, recreating the
 16 scene, if you will, and using the same type of camera to model
 17 the article of evidence so that the view is more comparable of
 18 a one to one comparison.

19 For example, you may have a colored shirt that has
 20 been recorded on black and white videotape. Now, obviously,
 21 the colors will not appear on the black and white videotape.

22 But by knowing how the process works, you can take
 23 that into account, and by modeling it, you can --

24 Q. What do you mean by modeling it?

25 A. Taking the article of evidence and, using a camera in the

1 A. Yes, there are.
 2 Q. For -- can you give us some examples of where there are
 3 forensic photo labs set up?
 4 A. Yes. The United States Army Criminal Investigation
 5 Laboratory in Fort Gilam (phonetic), Georgia; the Wisconsin
 6 State Crime Lab in Wascott, Wisconsin.

7 Indianapolis State Police has individuals who conduct
 8 this type of examination. Other places -- these types of
 9 examinations have been done by others in San Diego.

10 There are --

11 Q. How about in the world, outside the United States?

12 A. Yes. The Netherlands Forensic Institute in Amsterdam --
 13 I'm sorry, it's not in Amsterdam, but it's in the Netherlands
 14 -- has individuals who conduct these types of comparisons.

15 The Forensic Science Service in the United Kingdom has
 16 individuals who conduct these types of comparisons. The
 17 Queensland State Police in Australia, I believe is the right
 18 organization, has individuals who conduct these types of
 19 comparisons.

20 Q. You mentioned a couple of states in the United States. I
 21 -- we think in terms of fingerprints. And probably every
 22 police department has people that are -- that can do
 23 fingerprint comparisons.

24 Are there that many -- are there similarly situated
 25 units in various states of organizations that do the forensic

1 laboratory, to try and recreate the view that was -- appears to
 2 have been present in the bank.
 3 Q. How long -- and you may have answered this question, but
 4 how long has this science, technology of forensic photo
 5 analysis, been in existence?
 6 A. Well, people have been using photographs to make
 7 comparisons almost since the beginning of photography.

8 The first use of a photograph in a court of law was
 9 actually in the 1840s, in Paris, in which a photograph taken of
 10 a suspect was used for identification purposes in court.

11 Q. And how long has the FBI been involved in forensic
 12 photographic comparison?

13 A. The FBI first set up a photo group back in the 1930s.
 14 There were -- there was a specific unit set up whose
 15 responsibility it was to conduct comparisons in the 1960s.
 16 Q. And are the techniques that you use well recognized in the
 17 scientific community --

18 A. Yes.

19 Q. -- in forensics?

20 A. Yes.

21 Q. And in the scientific community at large?

22 A. Yes.

23 Q. What other -- are there other agencies or law enforcement
 24 facilities throughout the world that engage in forensic photo
 25 analysis besides the FBI?

1 photography as well?
 2 A. Well, outside of the organizations that I mentioned, I'm
 3 not immediately aware of them.
 4 Q. And why would that be, if you know the answer?
 5 A. There's not that much of a call for this type of analysis,
 6 because this type of evidence doesn't typically come in to most
 7 law enforcement agencies, at least not for this type of
 8 analysis.

9 Q. Now, you testified that you've been involved in thousands
 10 of -- thousands of times you've been involved in enhancing
 11 photographic evidence to bring out the types of details that
 12 you were talking about.

13 On how many occasions have you been involved in actual
 14 photographic analysis for comparison purposes to match the
 15 objects in a photograph with other objects, physical objects
 16 that may have been presented to you?

17 A. Thousands of times.

18 Q. And have you been qualified as an expert in forensic
 19 photography and forensic photography analyses for comparison in
 20 state and federal courts?

21 A. Yes, I have.

22 Q. And approximately how many times have you testified in
 23 either state or federal court as an expert in forensic
 24 photographic analysis?

25 A. Over two dozen times.

1 Q: And did at least some of those times involve the actual
 2 comparison of photographs with known objects and to render an
 3 opinion as to whether or not the objects depicted in the
 4 photograph were, in fact, the same objects as displayed to you?
 5 A. On about half of the times that I've testified have
 6 involved cases in which I have conducted comparison analyses
 7 either of objects or of people or in some cases both.
 8 Q. Now, the results that you have, that you're able to arrive
 9 at on occasions, on all occasions that you reach an opinion as
 10 to the comparison, the level of comparison between an object
 11 and a photograph, are these comparisons subject to review by
 12 others in the scientific community, specifically with respect
 13 to forensic photography, to either confirm or refute your
 14 findings?
 15 A. Yes, every examination that goes on in the FBI laboratory
 16 in my unit must go through a peer review process.
 17 Q. And would you explain what that is?
 18 A. Basically, I conduct my examination, I produce a report
 19 that describes my results, and I provide that to another
 20 qualified examiner who reviews the entire case, sees that I
 21 have used the proper processes and conducted the correct
 22 analyses, and then reads the report, determines if they're in
 23 agreement with it, and then will sign off on the report.
 24 In cases in which a positive identification is made,
 25 there is a further review that goes on in which they

1 Q. Is there any body of individuals or groups that disagree or
 2 challenge the scientific validity of forensic photo comparison?
 3 A. Not that I'm aware of.
 4 THE COURT: I could think of one.
 5 MR. STEFIN: Besides the Defense Lawyers' Association.
 6 THE COURT: Oh.
 7 BY MR. STEFIN:
 8 Q. Perhaps I didn't -- I don't know if I'd phrase it -- but
 9 those individuals in the scientific community that would
 10 disagree with your findings or dispute --
 11 Like, for example, polygraphs as an example. There's
 12 probably a body of individuals in the scientific community that
 13 disagree with the validity of polygraphs.
 14 Is there any such body that exists with respect to
 15 disagreeing with forensic photo analysis?
 16 A. Not that I'm aware of.
 17 Q. With respect to your own personal qualifications, training
 18 and experience, in addition to the times you've testified as an
 19 expert witness, do you belong to any professional forensic
 20 associations or organizations which discuss and further -- to
 21 further enhance and to understand this field?
 22 A. Yes, I do.
 23 Q. And what, what organizations would that be?
 24 A. The American Academy of Forensic Sciences is an
 25 organization of which I am a member; the International

1 specifically go in and review every single step of the
 2 identification process and signs off on confirming the
 3 identification.
 4 Q. And was that peer review employed in this particular case
 5 --
 6 A. Yes, it was.
 7 Q. -- with respect to all the findings that you made with all
 8 the evidence and all the exhibits that were presented to you in
 9 all these eight bank robberies?
 10 A. Yes.
 11 Q. And again, in addition to the fact that you have in-house
 12 peer review, would your findings be subject to -- available for
 13 verification, subject to verification by others in the
 14 scientific community outside the FBI who could review your
 15 processes and come to the same conclusions that you came to?
 16 A. I'm not sure I understand the question, whether it could be
 17 subject to outside --
 18 Q. In other words, if there were other -- if someone else in a
 19 forensic -- with forensic photographic analysis -- with a
 20 forensic photographic analysis background were to review your
 21 work, not just those within your own organization, but outside
 22 of your organization, would they be able to validate your
 23 findings based on the techniques that are generally employed in
 24 making this analysis?
 25 A. If they had had the same training and background, yes.

1 Association for Identification, also known as the IAI, is
 2 another one of these organizations; the International Society
 3 for Optical Engineering.
 4 Those three are the three primary forensic
 5 organizations or organizations that have forensic elements in
 6 them that have individuals who practice the field of comparison
 7 analyses.
 8 Q. And is there literature, articles, scientific publications
 9 that deal in the area of forensic photo identification and
 10 analyses?
 11 A. There have been articles published regarding forensic
 12 photographic comparisons, yes.
 13 Q. And specifically as it pertains to comparison analyses done
 14 with photographs of clothing and the actually items of clothing
 15 that have been seized from a, say a suspect?
 16 A. Yes, I've written articles on that myself.
 17 Q. What -- for example, what are the, what are the names of
 18 these publications, if you know the titles --
 19 A. An article that I -- that was published in the American
 20 Academy of Forensic Sciences Journal, the Journal of Forensic
 21 Sciences, back in 1999, I published an article entitled
 22 Photographic Identification of Denim Clothing from Bank Robbery
 23 Surveillance Film.
 24 Q. And without getting into the underlying article in much
 25 detail, what was the basis upon which you were able to make a

1 forensic identification with respect to those blue jeans --
 2 A. Basically, there were features present on the seams and
 3 near to the seams on the blue jeans that were unique to the
 4 pair of blue jeans that were identified.

5 Those features could be seen in the photographs of the
 6 bank film that I processed, and it could be shown that through
 7 the similarity of these features that they were the same pair
 8 of blue jeans.

9 Q. And as it pertains to this particular case, were you able
 10 to identify unique or identifying features in the shirt that
 11 was seized from the defendant's residence with the various bank
 12 robbery photographs that were presented for your analyses?

13 A. Yes, I could.

14 Q. And without getting into all the details of how you were
 15 able to make your analyses, could you just kind of give us an
 16 overview of how it is that you were able to make a positive
 17 identification of the shirt seized from the defendant's
 18 residence?

19 A. The reason that it was possible to identify this shirt in
 20 this case is that it is a pattern shirt. And at the locations
 21 where the patterns contact one another at the seems, one can
 22 see the intersection of the pattern along the locations of the
 23 seems.

24 That intersection of those patterns is what we call an
 25 individual identifying characteristic. It's a randomly

1 occurring feature that is incorporated into the shirt during
 2 manufacture.
 3 Manufacturers do not make an effort, in general, to
 4 make these features align, because to do so would be
 5 prohibitively expensive.

6 THE COURT: Expensive coats do that.

7 THE WITNESS: Huh?

8 THE COURT: Expensive clothes do that?

9 THE WITNESS: Yes.

10 THE COURT: That's how you can tell a five thousand
 11 dollar suit from a five hundred dollar suit.

12 THE WITNESS: However, there are also places where it
 13 is not possible --

14 THE COURT: I understand that.

15 THE WITNESS: -- to make them align because of the
 16 curvature, such as along the arms and the sleeves.

17 And, therefore, by observing the same intersection of
 18 features on the shirt depicted in the bank surveillance film or
 19 videotapes, and noting them on the shirt that was presented to
 20 me in the laboratory, it was possible to, one, see that the
 21 characteristics were the same, and then it was even possible in
 22 this case, because it was a repeating pattern that could be
 23 measured, it was possible to estimate probabilities associated
 24 with that random occurrence and find that the --

25

1 BY MR. STEFIN:

2 Q. What do you mean by that, the probabilities associated with
 3 it?

4 A. Well, basically, the occurrence of where the pattern is cut
 5 out at a specific point in the pattern is a randomly occurring
 6 event through the manufacturing process.

7 Because of that, one has to first assess what's the
 8 smallest feature that you can see. And in this case, it's a
 9 feature that's one thirtieth -- one thirty-fifth, actually, of
 10 the overall pattern length.

11 Once I can see where that pattern -- where that
 12 smallest feature is --

13 Q. And what, what was that smallest feature, by the way?

14 A. It's a thin dark line on the shirt, on the pattern of the
 15 shirt.

16 Q. Okay.

17 A. Once I can determine where that feature occurs, I can see
 18 where it occurs relative to the, to that same feature, if you
 19 will, on the other side of a seem.

20 And there's a one in thirty-five chance that that
 21 feature -- if you were taking a -- simplifying assumption that
 22 you're dealing just with a straight edge, there's a one in
 23 thirty-five chance that that feature will align.

24 Every seem has a one in thirty-five chance of having
 25 that feature aligned. And so when you have two of these seems,

1 you have a one in thirty-five times one in thirty-five chance.
 2 Which, for simplicity, and to be conservative, to make
 3 the math easier, I'm saying it's one in thirty. One in thirty
 4 times one in thirty is one in nine hundred.

5 Now, once I get a third seem, it's one in thirty times
 6 one in thirty times one in thirty, which is twenty-seven
 7 thousand.

8 Now, in this particular case, because I was able to
 9 contact the manufacturer and get an estimate from them of the
 10 maximum number of shirts, which in this case was eighteen
 11 thousand --

12 BY MR. STEFIN:

13 Q. That were manufactured by the Van Huesen Corporation?

14 A. The Van Huesen -- right.

15 Once I was able to determine that eighteen thousand
 16 was the maximum number that could have possibly been
 17 manufactured, I knew that once I had twenty-seven thousand -- a
 18 one in twenty-seven thousand chance, that the statistics argue
 19 for it being the same shirt.

20 And, therefore, I could conclude, based on these
 21 statistics, that it is, in fact, the same shirt.

22 Q. All right. And that's just basically taking three areas of
 23 comparison in the shirt -- finding three areas of comparison?

24 A. Right.

25 Q. And, in fact, you made findings with respect to some of the

1 blank robberies that there were up to seven areas of comparison.
 2 So it would be, basically, the scientific -- well, the math
 3 would basically be thirty-five to the seventh power
 4 essentially?

5 A. That is correct.

6 Q. For that to -- for two shirts -- for the probability of two
 7 shirts being manufactured to have all of those same identifying
 8 features?

9 A. Yes.

10 Q. And we figured that out and it's a crazy number of two
 11 hundred and sixty-five billion or something?

12 A. Actually, I believe that we were -- there were eight -- in
 13 one case, there were eight different one in thirty chances --
 14 one in thirty-five chances.

15 But thirty to the eighth is one -- is basically six
 16 hundred fifty-six billion, I believe.

17 Q. I think we'll stop at a billion, just to make it simple.
 18 But how many actually, with respect to the shirt manufacturing
 19 process, through your -- how did you --

20 How are you knowledgeable about how shirts, such as
 21 the Van Huesen shirt, are manufactured, that factor in to your
 22 analyses?

23 A. Part of the training process that we go through for this
 24 position involves actually going to the manufacturing plants,
 25 factories where articles of clothing made. We also go to

1 A. There are a total of five of us who are currently
 2 conducting this type of work.

3 Q. So basically, do you get involved in some of the big cases
 4 around the country that -- if this type of work is called for?

5 A. Yes.

6 Q. Is there any error rate that's associated with the
 7 techniques that you do?

8 In other words, it's been found that your opinions,
 9 for example, have been proven to be mistaken due to some faulty
 10 -- fault of science or the technique?

11 A. Well, the term error rate doesn't really apply to this
 12 field as a science, it applies to the individual examiner. One
 13 -- this is --

14 This field is comparable to fingerprint analysis and
 15 shoe print analysis in that, basically, the reliability of the
 16 examination depends upon the individual conducting the
 17 examination.

18 I am not aware, having said that though, of any case
 19 in which an object or a person was positively identified and
 20 then, by an examiner, and then found to not be the person or
 21 object.

22 MR. STEFIN: Your Honor, at this time, I'm going to
 23 tender the witness as an expert in forensic photo analysis --

24 THE COURT: You may voir dire the witness, Mr. Howes.

1 photographic manufacturing plants at Kodak and Polaroid.

2 But in this particular instance, I visited
 3 manufacturing -- well, cutting plants in Alabama where the
 4 patterned material is cut out, as well as manufacturing plants
 5 where the cut out pieces are sewn together so that I can see
 6 for myself how the process takes place.

7 I've also been to another plant, Guess plant in
 8 Southern California where shirts were also manufactured, and
 9 found that they use the same manufacturing processes at the
 10 Guess factory as they do at the Arrow shirt factories in
 11 Alabama and outside of Atlanta, Georgia.

12 Q. All right. In addition to writing articles and appearing
 13 as an expert witness in cases, have you also -- do you also
 14 lecture in this field to other law enforcement agencies or
 15 other scientific groups?

16 A. Yes, I do.

17 Q. And how many times have you given lectures in this area?

18 A. Couple dozen.

19 Q. And that would be throughout the United States?

20 A. Yes.

21 Q. Outside the United States as well?

22 A. I have traveled to both Germany and Japan for the FBI and
 23 presented -- given presentations on this type of analysis, yes.

24 Q. Actually, how many FBI personnel are assigned to the
 25 forensic photographic analyses section?

1 VOIR DIRE EXAMINATION

2 BY MR. HOWES:

3 Q. Are you saying that every time you testify, you or one of
 4 your colleagues testify, that the person's found guilty?

5 A. I didn't say that.

6 Q. Well, did you not just say that every time an
 7 identification of an individual has been made, it's been found
 8 to be accurate?

9 A. Every time an individual -- yes, sir.

10 Q. Okay. So you've never been wrong?

11 A. Oh, no.

12 Q. No, you --

13 A. I didn't say that.

14 Q. Okay.

15 A. I make mistakes all the time. Lots of people make mistakes
 16 all the time. What I said was that in no example that I am
 17 aware of has an object or person positively identified been
 18 found to not be the object or person.

19 Q. Well, how would someone make that finding after you've made
 20 the observation? How would that come about?

21 A. That would be -- have to come about by someone conducting
 22 the same type of examination and finding a mistake in an
 23 examination.

24 Q. I see. So in other words, there would have to be human
 25 error involved?

1 A. That's correct.
 2 Q. Or someone has a different opinion?
 3 A. Are we talking in general or in the specific cases that I
 4 was mentioning?
 5 Q. You were talking about in specific cases.
 6 A. Yes.
 7 Q. So let's stay with specific cases.
 8 A. Uh-huh.
 9 Q. Has it -- do you know of an example when a test has ever
 10 been done after a finding has been made by you or one of your
 11 colleagues?
 12 A. There have -- let me see. Not that I can immediately
 13 recall, no, sir.
 14 Q. So there's been no testing of your findings; is that
 15 correct?
 16 A. No, that's not.
 17 Q. Well, explain for me those last two answers. If you say
 18 there's never been a testing of one of your findings, how can
 19 you give me that answer?
 20 A. Because the peer review process that my article, which was
 21 published in the Journal of Forensic Sciences, involved the
 22 process of my laying out my examination of the blue jeans, in
 23 this case, followed by a description of my conclusions.
 24 And the peer review process for the Forensic Journal
 25 involved other experts in the field reading the article, seeing

1 Q. By other people using the raw data or by other people
 2 looking at what your conclusions were?
 3 A. Not only -- my conclusions were a part of the paper. The
 4 steps involved in my process of getting to those conclusions
 5 were presented in the paper, as well as the images that I used
 6 from which to draw my conclusions.
 7 Q. So the steps were agreed to by other people, the steps you
 8 take, correct?
 9 A. Yes.
 10 Q. Like converting video to digital imaging?
 11 A. That would be an example of a step. It wasn't in this
 12 case.
 13 Q. Okay. But I'm just saying, like that?
 14 A. Yes.
 15 Q. And then your conclusion was accepted after they looked at
 16 the methodology that you used?
 17 A. That is correct.
 18 Q. So basically what you're saying is, is that only your
 19 methodology has been approved?
 20 A. In that example that methodology was approved, yes, sir.
 21 Q. Okay. In that example that methodology was approved. Now,
 22 but your statement that -- well, all peer analyses -- all peer
 23 review that you're aware of occurs within the FBI; is that
 24 correct?
 25 A. No, there's peer analyses going on at crime laboratories

1 whether my techniques were accurate or not, and then agreeing
 2 with my conclusions.
 3 If they had not agreed with my conclusions, the paper
 4 could not have been accepted by the journal.
 5 Q. None of them took the raw data that you used to reach your
 6 conclusions to reach their own conclusions though, correct?
 7 A. I do not believe that any of them would have had access to
 8 the original bank film.
 9 Q. So, in fact, what you're saying is that outside of your --
 10 basically, you're saying you wrote a paper and your paper has
 11 not been challenged; is that what you're saying?
 12 A. My paper was accepted.
 13 Q. Your paper was accepted?
 14 A. Yes.
 15 Q. And has not since been challenged?
 16 A. That is correct.
 17 Q. But no one has checked the results of your paper or the
 18 results reached in your paper, correct?
 19 A. No, the results reached in my paper were checked during --
 20 as a part of the peer review process.
 21 Q. Okay. Well, let's break that down. You're talking about
 22 peer review within the FBI?
 23 A. No, sir.
 24 Q. Outside the FBI?
 25 A. Yes, sir.

1 throughout the world.
 2 Q. Okay. Peer analyses of your work?
 3 A. That is correct.
 4 Q. Okay.
 5 A. Only in the FBI lab.
 6 Q. Okay. Where else, besides the FBI lab, does peer review
 7 occur of what work you are performing?
 8 A. I'm not sure I understand your question.
 9 Q. Do you send your pictures --
 10 THE COURT: Well, I think you're talking about two
 11 different things and that's the confusion. There's peer review
 12 within the FBI, and there's peer review outside the FBI.
 13 And when we talk about peer review in general, we
 14 don't know which one we're talking about.
 15 BY MR. HOWES:
 16 Q. Okay. I'm talking about peer review outside -- peer review
 17 within the FBI is the FBI's standard operating procedure; you
 18 have to get somebody else to agree with you?
 19 A. Correct.
 20 Q. And then if you are going to make an identification of a
 21 person, you need another level of approval?
 22 A. Correct.
 23 Q. Okay. Outside of internal FBI peer review, there is no
 24 other peer review, correct?
 25 A. Not of our work.

1 Q. And your peer review occurs among the five of you who do
 2 this type of work, correct?
 3 A. At the moment, yes.
 4 Q. Okay. So you're comparing and reviewing with the other
 5 five people in the same group?
 6 A. That is correct.
 7 Q. Okay. So your peerage is limited to five people?
 8 A. Within the laboratory.
 9 Q. Well, I mean, within the world it's limited to the five
 10 people; is that correct?
 11 A. No.
 12 Q. Okay. Well, who, outside of those five people that work
 13 within your laboratory, ever conduct any peer review of what
 14 you're doing?
 15 A. The only time that they would have peer review would be an
 16 example like I gave you of the journal article.
 17 Q. Okay. But a journal article does not address a particular
 18 item of interest, an item of clothing, a photograph, whatever,
 19 correct?
 20 A. Correct.
 21 Q. That's a question of scientific intellectual interest
 22 versus a pure examination and analyses?
 23 A. Correct.
 24 Q. Okay. So the peer group to whom you answer is limited to
 25 four others?

1 A. At the moment.
 2 Q. Okay. Well, during the time of your evaluation of these
 3 items was it limited to four others?
 4 A. We had a couple more people who were doing these types of
 5 analyses who went to agent class, they left the lab to become
 6 agents.
 7 And two -- those two may have still been there at the
 8 time I was working on this case initially. I don't remember
 9 specifically if they were there at the time.
 10 Q. So your peer group might have been as large as six?
 11 A. Seven -- oh, six, yes, correct.
 12 THE WITNESS: Oh, if I may correct, Your Honor. There
 13 actually -- there was also another individual -- there were
 14 another two individuals, one of whom has since retired from the
 15 Bureau and another individual who has left the Bureau, who were
 16 also available at the time.
 17 BY MR. HOWES:
 18 Q. Has your theory been scientifically tested outside of the
 19 FBI?
 20 A. In so much as there are other laboratories conducting this
 21 type of analyses and testifying to it, I would say that
 22 indicates that, yes, it has been tested outside of the FBI
 23 laboratory.
 24 Q. Would you say in the Middle Ages, when there were many
 25 people trying to make gold out of other substances, that that

1 was necessarily a valid scientific test of the theory?
 2 A. If they were using the scientific process to attempt to
 3 convert lead to gold, for example, which is one example of
 4 alchemy --
 5 Q. Right.
 6 A. -- and they were using the scientific process, and they
 7 found that they could not successfully convert lead to gold,
 8 then that would be a successful application of the scientific
 9 process.
 10 Q. But was -- has it been tested -- has your process been
 11 tested?
 12 A. Yes.
 13 Q. Simply by other people doing it is what you're saying?
 14 A. Yes.
 15 Q. Okay. What's the potential for error in your, in your
 16 field?
 17 A. The potential for error in the making of an identification
 18 rests with the specific individual examiner conducting the
 19 examination.
 20 Q. So it's a subjective determination; is that correct?
 21 A. It can be subjective, based on someone's knowledge,
 22 training and experience, but it should be objective.
 23 Q. Okay. But it is a subjective determination, correct?
 24 A. The significance -- identification is a very specific
 25 process, and it requires that one assess -- in a case like

1 this, as well as a case of fingerprint comparison or footwear
 2 or tire track comparison, one must assess the significance of
 3 every individual characteristic.
 4 The significance may be the -- the significance of a
 5 specific characteristic may be greater to one who has more
 6 experience than to someone who is new to the field.
 7 And, therefore, there can be differences of opinion
 8 regarding the significance of specific features.
 9 Q. Who has the most experience in this field?
 10 A. In this field?
 11 Q. Yes.
 12 A. Photographic comparisons?
 13 Q. Yes.
 14 A. The FBI laboratory.
 15 Q. Who within the FBI laboratory?
 16 A. At the moment, me.
 17 THE COURT: There you go.
 18 MR. STEFIN: Thanks. I'm going to ask that question.
 19 THE COURT: Take that.
 20 MR. HOWES: Should I take it to the heart or to the
 21 head?
 22 BY MR. HOWES:
 23 Q. What standards exist for the maintenance of the techniques
 24 operation?
 25 A. What standards exist?

1 I'm not sure I understand your question.

2 Q. Do you calibrate your equipment?

3 A. Which equipment?

4 The equipment that is used --

5 Q. Your computer.

6 A. The computer is calibrated when it comes in from the

7 factory. The calibration of the computer does not affect the

8 analyses.

9 Q. Are you speaking about this from your knowledge of

10 computers?

11 A. I'm speaking about this from my knowledge of the

12 examination process.

13 Q. Okay. Have you ever had a computer crash?

14 A. Yes, I have.

15 Q. Okay. Have you ever had a computer program crash?

16 A. Oh, yes.

17 Q. Okay. Have you ever had a computer program crash on the

18 computer that you use to enhance the photos in this particular

19 case?

20 A. Yes, that computer has crashed.

21 Q. Okay. After it crashed, was it retested or recertified to

22 make sure that it was functioning properly?

23 A. I saw it with my own eyes that it was function properly.

24 Q. By turning it back on again?

25 A. And seeing that it gave me what I expected it to give me.

1 A. Yes.

2 Q. Because the contents of the original image are still in the

3 video?

4 A. Correct.

5 Q. Not in what you're using to compare to a photograph or to,

6 in this case, a shirt, correct?

7 A. Could you repeat that question?

8 Q. The contents remain in the video, as opposed to the image

9 that is enhanced digitally that you use to compare to a

10 photograph or to a shirt?

11 A. The enhanced image continues to be a true and accurate

12 representation of the scene as it was recorded on the

13 videotape.

14 I can show the process that one goes from looking

15 at the videotape to producing a print or producing an image on

16 the computer screen.

17 The question -- the process that I go through is

18 merely one in which it improves the visibility of certain

19 features.

20 Sometimes that may be at the cost of a loss of

21 visibility of other features. But if one has a question about

22 those other features, one can always go back to the original

23 videotape.

24 Q. And did you ever do that in this case?

25 A. Yes.

1 Q. And it rebooted?

2 A. Exactly.

3 Q. And that's the nature and extent of your determination that

4 it was working properly?

5 A. The only thing I use the computer for in this type of

6 examination is to help me clearly see the details that I am

7 looking at.

8 Q. Okay. And you do that by changing a video picture into a

9 digital enhancement, correct?

10 A. Into a digital image.

11 Q. Into a digital image. And in the process of doing that,

12 you heighten certain aspects of the photograph, correct?

13 A. I make more visible certain aspects of the photograph.

14 Q. And diminish others?

15 A. If necessary, yes.

16 Q. Thereby changing the image as it existed in its most

17 natural state?

18 A. It gives a representation that is different from the

19 original image.

20 Q. Okay.

21 A. However, the contents of the original image have not

22 themselves been changed.

23 Q. The contents have not been changed?

24 A. No.

25 Q. Just the appearance of them?

1 Q. You went back and took out enhancements to bring in other

2 parts?

3 A. There were images in this case in which I was looking at

4 two different parts of the picture for two different reasons.

5 And I enhanced part of the picture --

6 I enhanced the picture to enhance the visibility of

7 features at one part so that I could focus on that, and then I

8 enhanced other pictures -- the other part --

9 I enhanced the picture a separate way to bring out the

10 visibility of other parts of the picture.

11 Q. But never the same precise part twice, correct?

12 A. I'm sorry. Never the same --

13 Q. Never the same -- you said you take one part of the picture

14 and do one thing to it, and another part of the picture and do

15 another thing to it.

16 Never two, two tests or two enhancements on the same

17 part of the picture, correct?

18 A. No. No, no, no. Multiple enhancements are attempted on

19 the image to see what produces the most visibility of the

20 features.

21 Q. Of whatever feature you're looking for?

22 A. What I am looking at, the part of the feature -- the part

23 of the object that I am looking at. I try a number of

24 brightness and contrast differences in the sharpening that I'm

25 using in order to see what best clarifies the visibility of

1 that object or feature.
 2 Q. Just a couple more questions. How often is the pattern
 3 reproduced in the shirt that's involved in this case?
 4 A. I'm sorry. How often is the --
 5 Q. How often is the pattern reproduced in the material?
 6 THE COURT: Reproduced or repeated?
 7 MR. HOWES: Repeated.
 8 THE WITNESS: Ninety millimeters, about three
 9 and-a-half inches.
 10 BY MR. HOWES:
 11 Q. Every three and-a-half inches?
 12 A. Yes, sir.
 13 Q. Okay. And do you know whether or not Van Huesen has a
 14 proprietary interest in this particular pattern?
 15 A. According to the people at Van Huesen that I spoke to, they
 16 do not own that pattern.
 17 MR. HOWES: Thank you.
 18 That's all I have, Your Honor.
 19 THE COURT: All right.
 20 MR. HOWES: Your Honor, I would move in limine that
 21 this testimony not be admitted into evidence under Rules 702
 22 and 703. Based upon this presentation here, the government has
 23 not met its standard under Daubert and under the rule to
 24 satisfy the requirements, and this Court should exclude this
 25 testimony into evidence.

1 THE COURT: The defendant's motion to exclude the
 2 proffered expert testimony of the witness will be denied.
 3 The Court has considered the case of Daubert versus
 4 Merrill Dow Pharmaceuticals, Inc., which is at 113 Supreme
 5 Court 2786; the later case, which is more appropriate here, of
 6 Kumho, K-U-M-H-O, Tire Company, Limited versus Carmichael,
 7 which is at 119 Supreme Court 1167; the more recent case of
 8 United States versus Cunningham, which is an Eleventh Circuit
 9 case, at 194 F.3d 1186.
 10 The Court finds that pursuant to Rule 702 of the
 11 Federal Rules of Evidence scientific, technical, or other
 12 specialized knowledge will assist the trier of fact to
 13 understand the evidence or to determine a fact in issue.
 14 A witness qualified as an expert by knowledge, skill,
 15 experience, training, or education may testify thereto in the
 16 form of an opinion or otherwise.
 17 The Court finds that the proffered testimony of this
 18 witness is based upon sufficient facts or data; that his
 19 proffered testimony is the product of reliable principles and
 20 methods; and third, that the witness has applied the principles
 21 and methods reliably to the facts of this case.
 22 The Court further finds that the witness is about to
 23 testify with respect to a theory or technique which can be and
 24 has been tested; that his testimony has been subjected to peer
 25 review, and that the methodology has been subjected to peer

960

1 review and publication; and that further, the potential rate of
 2 error based upon the testimony of the witness is sufficiently
 3 small so that the matter may be submitted to the jury for its
 4 consideration.
 5 Accordingly, the objection will be overruled and the
 6 testimony of the witness will be received.
 7 MR. HOWES: May I have a standing objection, Judge?
 8 THE COURT: You certainly may, Mr. Howes.
 9 You may bring in the jury, Madam Clerk.
 10 Would you like to take a break before we start or are
 11 you strong enough to proceed?
 12 THE WITNESS: Let's go ahead.
 13 MR. STEFIN: Could I just have one minute with the
 14 witness?
 15 THE COURT: Of course.
 16 Ready?
 17 MR. STEFIN: Yes. Thank you, Your Honor.
 18 THE COURT: Okay.
 19 [Jury enters the courtroom].
 20 THE COURT: Please be seated.
 21 Members of the Jury, as I told you the first day of
 22 the trial, from time to time it does become necessary for the
 23 Court to hear testimony outside of your presence with respect
 24 to matters of law and other matters that require consideration
 25 by the Court alone.

500

1 Vorder Bruegge - Direct/Stefin

1 That was necessary in the case of this witness, and
 2 that's why we had to keep you out of the courtroom for the past
 3 hour or so. But we're now ready to proceed to continue the
 4 presentation of the Government's case.
 5 And I ask that you again swear this witness in the
 6 presence of the jury, Madam Clerk.
 7 RICHARD VORDER BRUEGGE, GOVERNMENT'S WITNESS, SWEORN.
 8 THE CLERK: You may have a seat.
 9 THE WITNESS: Thank you.
 10 THE CLERK: And would you please state your name and
 11 spell your last name for the record.
 12 THE WITNESS: My name is Richard W. Vorder Bruegge.
 13 The last name, Vorder Bruegge, is two words. The first word,
 14 Vorder, is spelled V, as in Victor, O-R-D, as in David, E-R.
 15 The second word, Bruegge, is spelled capital B, as in
 16 baker, R-U-E, double G, E.
 17 DIRECT EXAMINATION
 18 BY MR. STEFIN:
 19 Q. Mr. Vorder Bruegge, what do you do for a living, sir?
 20 A. I work at the Federal Bureau of Investigation in a unit
 21 called the forensic audio, video and image analyses unit.
 22 Q. Does that have like a nickname so I don't have to keep
 23 repeating that?
 24 A. FAVIA, I can't believe it's not butter.
 25 Q. Okay. Tell us about the forensic audio and video image

1 analyses unit. Tell us what that does, please.
 2 A. The forensic audio, video and image analyses unit consists
 3 of three parts, an audio analysis part, a video analysis part,
 4 and an image analysis part.

5 The audio and the video parts primarily are
 6 responsible for enhancing audio and video evidence, as well as
 7 conducting authentication of video and audiotapes.

8 The audio group also does some work in gunshot
 9 analyses, as well as voice comparison work from time to time.
 10 The image analyses part of the unit, of which I am a part,
 11 basically examines evidence, photographic evidence in the forms
 12 of videos, film, photographic negatives, photographic prints
 13 and digital images.

14 Q. All right. And how long have you been with the forensic
 15 photographic analyses unit?

16 A. Well, the group that I am a part of has been merged. The
 17 image analyses part of FAVIA has been a part of that unit since
 18 February of 2000.

19 The image analyses work that I do, and have been doing
 20 since 1995, used to be within a group called the special
 21 photographic unit.

22 Back two years ago they decided that since so much of
 23 our work involved video, they might as well merge us with the
 24 people that were doing video work as well.

25 Q. So you have been doing image analyses though since 1995?

1 A. I have been conducting forensic image analyses since 1995.
 2 Q. With the FBI?
 3 A. With the FBI, yes.
 4 Q. And did you have a background in image analyses prior to
 5 working for the FBI?
 6 A. Yes, I did.
 7 Q. And does that involve your graduate and postgraduate
 8 studies and work --

9 A. Yes, it did.

10 Q. -- career?

11 Why don't you tell the members of the jury a little
 12 bit about your background which qualifies you as a forensic
 13 examiner, photographic examiner?

14 A. I have a Bachelor of Science degree in engineering from
 15 Brown University in Providence, Rhode Island, which I received
 16 in 1985.

17 Immediately after graduating from that program, I
 18 entered a program in geological sciences at Brown University.
 19 I received a Master's degree in 1987, followed by a Ph.D. in
 20 1991.

21 My work in the field of geological sciences involved
 22 basically analyzing radar data, radar pictures, if you will, of
 23 the planet Venus to try and determine its geological history.

24 A particular area on Venus has mountain belts much
 25 like mountain belts on the Earth, and I was conducting analyses

1 to see what the similarities and differences were between
 2 mountain belts on Venus and mountain belts on the Earth.
 3 Q. So would your work have involved and these studies have
 4 involved image analyses essentially?

5 A. Absolutely.

6 Q. And where were these images coming from? Is this
 7 photographic evidence or --

8 A. It is photographic evidence. Although it was radar data,
 9 it was pictures, it was effectively black and white pictures
 10 that were just taken with radar waves rather than light -- than
 11 optical light waves.

12 The work that I was engaged in then involved enhancing
 13 the images to more clearly see the features that I was looking
 14 at.

15 Q. For example, what, what types of features would you be
 16 looking on -- looking for on the image analyses?

17 A. I was looking for things like mountain belts, specific
 18 ranges of ridges, things that might look like the Himalayan
 19 mountains on Earth, as well as looking for other features like
 20 faults, such as the San Andreas Fault in California, where two
 21 plates of the Earth are sliding past one another.

22 I was trying to enhance these images which came from
 23 -- well, the radar -- there's a radar dish in Puerto Rico, the
 24 Aerocene (phonetic) Radar Dish, that I actually had a chance to
 25 go and take some of this data myself and process it so that we

1 could get better pictures of Venus, as well as radar data that
 2 was recovered from a Soviet space craft that was in orbit
 3 around the planet Venus in the early eighties.

4 Towards the end of my graduate career, a U.S. mission
 5 called Magellan (phonetic) went in orbit around Venus, and that
 6 -- I had a little bit of an opportunity to review some of that
 7 data and analyze that.

8 Q. Did you ever work for any U.S. space agencies or on behalf
 9 of a space agency?

10 A. After I got my Ph.D., I went to work as a contractor for
 11 NASA helping them develop space craft missions, like the Mars
 12 Pathfinder and the recent near Earth asteroid rendezvous, which
 13 landed, actually landed a space craft on an asteroid.

14 I was not a NASA employee, but I was working in NASA
 15 headquarters alongside of NASA employees.

16 Q. And when was that approximately?

17 A. From 1990 to nineteen ninety -- end of 1994.

18 Q. And during that time, did your work involve, again, image
 19 analyses, that is, taking data from either radar or photographs
 20 and doing studies, reviews, analyses of these --

21 A. At the same time that I was working for NASA, I also
 22 applied for a grant to spend part of my time doing further
 23 image analyses using the data from the Magellan mission, the
 24 U.S. mission that went to Venus in the late eighties.

25 And I was awarded a three year grant, which started

1 the year before I left that job to go to the FBI. When I went
 2 to the FBI, I had to basically terminate the grant and someone
 3 else picked up the work.

4 Q. All right. So you told us that you were hired on to the
 5 FBI in 1995, I believe. And what is actually your -- do you
 6 have an official job title or description?

7 A. Well, my job title is a federal government job title,
 8 photographic technologist. Within the FBI laboratory and
 9 within the forensic audio, video and image analyses, my
 10 functional job title is examiner of questioned photographic
 11 evidence.

12 Q. And how -- could you explain the field of forensic photo
 13 analysis? How long has that field been in existence for law
 14 enforcement purposes?

15 A. Well, the analyses of photographs for law enforcement
 16 purposes actually goes back almost to the beginning of
 17 photography itself.

18 There is a case in the 1840s, in Paris, in which a
 19 photograph of a suspect was used for an identification by a
 20 witness.

21 Since that time, basically, if a picture -- image
 22 analyses has been constantly taking place using photographs
 23 that arrive all the time.

24 Q. All right. So -- but -- all right. Well, then in terms of
 25 the FBI, how long has the FBI been engaged in forensic analyses

1 of photography?

2 A. Well, the FBI set up a photographic section in the 1930s
 3 that was basically dealing with anything to do with
 4 photographs.

5 Having a group that specifically was involved in
 6 analyzing imagery was -- the FBI formed a unit, formed a
 7 special photographic unit in the 1960s in large part to focus
 8 the analysis of photographs.

9 Q. So did you receive formalized training in photography and
 10 video to qualify you as a forensic technologist?

11 A. Actually, my training was to qualify me as an examiner of
 12 questioned photographic evidence.

13 Q. All right.

14 A. The training program involved basic courses in photography,
 15 surveillance photography, laboratory forensic photography,
 16 specialized courses in digital imaging, digital image
 17 processing, as well as courses in video.

18 The digital imaging classes and digital image
 19 processing classes included courses at the Rochester Institute
 20 of Technology in Rochester, New York.

21 I've taken a video class from the Sony Institute in
 22 San Jose, California. And the training also included --

23 Well, the most important part of the training was
 24 actually working on case work that was submitted to the lab
 25 while being supervised by a qualified senior examiner.

1 Q. So let's talk a little bit about the types of case work,
 2 the types of cases you get assigned to generally, first of all,
 3 and then maybe we'll get specifically to this particular case.

4 But what is it that the forensic analyses unit is
 5 asked to do, let's say, on a regular basis?

6 A. There are four basic types of examinations that we conduct.
 7 In just about every case, we're going to be conducting an image
 8 enhancement examination.

9 Q. What does that mean?

10 A. That basically means you take the questioned imagery,
 11 which, again, may be a videotape, it may be a photographic film
 12 negative, it may be a print.

13 And the investigators will have a certain question
 14 about a certain part of the picture. It may just be, can you
 15 improve the visibility of the person's face, or it may be, can
 16 you tell me what the license plate says, or what the logo on
 17 the shirt says.

18 Those types of image enhancement examinations we will
 19 do in practically every case, because we're always trying to
 20 get the highest image quality available.

21 Q. So this could be a still photograph or a video that has
 22 been taken, say a bank surveillance camera, for example?

23 A. Yes.

24 Q. That will be submitted to the FBI lab?

25 A. Yes.

1 Q. Assigned to one of the technologists like yourself?
 2 Actually, how many technologists are there in your
 3 department?

4 A. Today there are five of us who conduct these types of
 5 examinations.

6 Q. Five of you for the, basically, the entire United States?

7 A. That is correct.

8 Q. For the FBI, that is?

9 A. For the FBI, yes.

10 Q. Right. Are there other law enforcement agencies or state
 11 agencies that have their own forensic photographic units that
 12 you are aware of?

13 A. Yes.

14 Q. Are there many of them in the United States or just --

15 A. Well, forensic -- in the -- if you're talking about
 16 forensic photography, there are hundreds of organizations that
 17 do forensic photography. And that --

18 Q. I keep throwing out the word forensic and you use it. What
 19 does that mean, forensic?

20 A. Forensic is simply the application of science to matters of
 21 law.

22 Q. All right. So criminal cases which involve photography,
 23 we're talking about forensic photography?

24 A. Yes.

25 Q. Or other types of legal areas or issues?

1 A. Yes.
 2 Q. All right. I'm sorry I interrupted you.
 3 A. Well, forensic photography, per say, may be enhancement of
 4 a fingerprint, or a shoe print, or a tire track, or in some
 5 cases say a questioned document analyses.

6 You may have something called an indented writing
 7 examination in which -- if someone writes on a pad of paper and
 8 then removes the top sheet, the indentations of the pen are
 9 left on the lower levels, and by using forensic lighting
 10 techniques, you can see what was written just by the
 11 indentation left in.

12 That forensic photography is practiced in hundreds of
 13 crime laboratories across the United States. That's basically
 14 a photographer doing law enforcement photography. That can
 15 also include crime scene photography.

16 Forensic image analyses, the type of work that I and
 17 the four other people in my lab do, is conducted by only a few
 18 labs in the U.S. and overseas.

19 Other examples where this type of work is done
 20 included the U.S. Army Crime Lab in Fort Gillem, Georgia; the
 21 Wisconsin State Crime Lab in Wascott, Wisconsin conducts
 22 examinations like this; the Indiana State Police have a crime
 23 lab in which image analyses examinations are conducted.

24 Likewise, there are individuals overseas in the
 25 Netherlands who work for their federal law enforcement forensic

1 laboratory who conduct image analyses examinations.
 2 The United Kingdom has their Forensic Science
 3 Services, which is basically the United Kingdom's FBI
 4 laboratory, who does these types of examinations.
 5 Likewise, there are individuals in Australia who work
 6 for law enforcement and do these types of examinations.
 7 Q. Are there professional associations in forensic photo
 8 analysis in comparison that exist out there --
 9 A. Well --
 10 Q. -- and do you belong to any of these organizations?
 11 A. Yes. As far as forensic photographic analyses and forensic
 12 photography go, the leading organization for that is the
 13 International Association for Identification, also known as the
 14 IAI.

15 The IAI started off as a fingerprint organization and
 16 is paralleled by the larger American Academy of Forensic
 17 Sciences, which is the largest forensic organization in the
 18 U.S.

19 I'm a member of both of those organizations, and there
 20 are other individuals who conduct image analyses examinations
 21 that are members of those groups.

22 We frequently -- there are annual conferences at which
 23 we will go and present papers on work that we have done in the
 24 field of image analyses.

25 Q. Are there, in fact, scientific papers that have been

1 written on this field of forensic analyses and comparison?
 2 A. Yes, there are.
 3 Q. And have you yourself written and published any periodicals
 4 or articles on this field?
 5 A. Yes, I have.
 6 Q. How many articles have you published?
 7 A. Well, I've had three articles published in formal journals
 8 or formal proceedings documents of conferences. I've also had
 9 multiple abstracts.

10 When you go to these conferences and present a paper,
 11 you write an abstract, which basically describes what you're
 12 going to talk about in the paper. And I've had dozens of those
 13 published.

14 Q. Have you also lectured in this field of forensic photo
 15 analysis?

16 A. Yes, I have.

17 Q. To what types of groups or organizations?

18 A. I -- most of the lectures that I give are at the scientific
 19 conferences, such as the American Academy or the International
 20 Association for Identification.

21 However, from time to time, I also will lecture to
 22 groups of prosecutors, for example, on specifics of image
 23 analyses.

24 There is an -- there is a -- the equivalent of the FBI
 25 Academy for prosecutors in the United States is the National

1 Advocacy Center in South Carolina, and I was invited down there
 2 last August to talk about image manipulation.
 3 I will frequently go to other organizations, federal
 4 and state organizations that are interested in these types of
 5 examinations so that they can know what types of things can be
 6 done, and also to find out what they can do to enhance their
 7 capabilities in these areas.

8 Also, I've been fortunate enough in my time at the FBI
 9 to be invited to Germany to talk at a conference of forensic
 10 scientists on photogrammetry, which is the science of obtaining
 11 measurements from images, as well as to Japan, where I visited
 12 the Japanese equivalent of the FBI laboratory and lectured on
 13 image analyses exams there.

14 Q. Just jumping back a little bit. With respect to papers
 15 that you've published in this field, what were the topics or
 16 what was the major topic that you discussed in these papers?

17 A. Well, just last Spring I had a chapter published in the
 18 John Wiley Encyclopedia of Imaging Sciences and Technology,
 19 which was entitled Imaging Sciences and Technology in Forensics
 20 in Criminology, which is basically an overview of imaging
 21 throughout law enforcement.

22 That included a large section on image analysis, since
 23 that's my primary field of interest. It also included sections
 24 on crime scene photography and laboratory forensic photography.

25 The two other papers that I mentioned, when I said I

1 had published three, both involved -- well, one involved a
 2 photographic identification of a pair of blue jeans from bank
 3 surveillance film. And that was published in the American
 4 Academy's Journal of Forensic Sciences.

5 The other paper involved my description of a technique
 6 for enhancing images based on averaging multiple pictures
 7 together to remove noise, and then identifying a minivan that
 8 was depicted in these images as being a suspect's minivan.

9 Q. So would it be fair to say that one of your areas of
 10 expertise or an area of expertise is the photographic analysis
 11 and comparison of photographs to items of clothing that may
 12 have been recovered say, for example, in a bank robbery case?

13 A. Yes.

14 Q. And have you ever testified as an expert witness in
 15 forensic photo analysis in other court proceedings, a state
 16 court or federal court?

17 A. Yes, I have.

18 Q. Approximately how many times have you been qualified as an
 19 expert in this field to testify and render opinions regarding
 20 your analyses?

21 A. I've been qualified as an expert in state and federal
 22 courts about two dozen times.

23 Q. Now, did you also need additional training or experience
 24 with respect to the analyses of items of clothing with
 25 photographic evidence?

1 A. Yes. Because so much of the evidence that we get in for
 2 comparison in our lab involves articles of clothing, it is
 3 important for us to know how the manufacture -- how these
 4 articles of clothing are manufactured.

5 Therefore, included as part of our training either
 6 during the formal period before we are qualified to be
 7 examiners or if the opportunity comes up after we've been
 8 qualified as examiners, we will go to factories and plants
 9 where materials are cut out and sewn together to make things,
 10 such as shirts, camouflage clothing, as well as other items.
 11 Q. Let's -- since this case involves shirts, I'd like to talk
 12 about shirts for a minute.

13 MR. STEFIN: But before I do that, I would offer at
 14 this time -- tender this witness as an expert in the field of
 15 forensic photo analysis and identification.

16 THE COURT: Did you wish to inquire now, Mr. Howes?

17 MR. HOWES: Thank you, Your Honor.

18 THE COURT: Okay. You may reserve your cross for
 19 later.

20 The Court will accept the witness as a qualified
 21 expert witness in the area indicated.

22 MR. STEFIN: Okay. Thank you, Your Honor.

23 BY MR. STEFIN:

24 Q. You were asked -- in Government's Exhibit -- you were
 25 furnished with Government's Exhibit --

1 Well, let me show you Government's Exhibit 11 and ask
 2 you if you recognize this exhibit and if you've seen it before
 3 and when you first saw it?

4 A. Yes, I recognize this item as a shirt that was submitted to
 5 me for comparison analyses.

6 Q. All right. And you also received a whole, you know, a
 7 number of other items as well. Let me show you what's been
 8 marked as Government's Exhibits 1-Z through 8-Z.

9 That is 1-Z, 2-Z, then there's a 2-ZZ, 3-Z, 4-Z, 5-Z,
 10 6-Z, 7-Z and 8-Z. And if you'll just one step at a time go
 11 through these exhibits and tell me if you recognize these as
 12 well.

13 A. I recognize 1-Z as a videotape that was submitted to the
 14 laboratory for my examination.

15 MR. STEFIN: For the record, that is the Kislak bank
 16 robbery video.

17 THE WITNESS: I recognize 2-Z as a videotape that was
 18 submitted to the laboratory for examination by me.

19 MR. STEFIN: That, for the record, is the Commercial
 20 Bank video -- or is that Commerce? Commerce. Sorry. I can't
 21 read my own writing.

22 THE WITNESS: I recognize the two rolls of thirty-five
 23 millimeter film marked 2-ZZ as rolls of bank film that were
 24 submitted to me for examination.

25 MR. STEFIN: All right. And that's also from the

1 Commerce Bank bank robbery.

2 THE WITNESS: I recognize 3-Z as a videotape that was
 3 submitted to me at the laboratory for examination.

4 MR. STEFIN: That's, for the record, the First
 5 Southern Bank robbery video.

6 THE WITNESS: I recognize 4-Z as a videotape submitted
 7 to me at the laboratory for examination.

8 MR. STEFIN: For the record, that's the Bank of
 9 America video robbery.

10 THE WITNESS: I recognize 5-Z as a videotape submitted
 11 to me at the laboratory for examination.

12 MR. STEFIN: For the record, that's the Bank United
 13 video.

14 THE WITNESS: I recognize 6-Z as a videotape that was
 15 submitted to me at the laboratory for examination.

16 MR. STEFIN: For the record, that's the SunTrust
 17 robbery video.

18 THE WITNESS: I recognize 7-Z as a videotape that was
 19 submitted to me at the laboratory for examination.

20 MR. STEFIN: For the record, that's the South Trust
 21 robbery.

22 THE WITNESS: And I recognize 8-Z as a videotape that
 23 was submitted to me at the laboratory for examination.

24 MR. STEFIN: For the record, the Union Bank robbery.

1 BY MR. STEFIN:

2 Q. And how are you able to identify and recognize all of those
3 exhibits?

4 A. I placed my marks on the videotapes using a marker in the
5 laboratory upon entering them into my evidence locker.

6 Q. And when you were sent all of these exhibits, what were you
7 asked -- what type of analyses were you asked to perform?

8 A. I was sent both the shirt, Government's 11, along with
9 several other items of evidence and some photographs of an
10 individual.

11 A. And I was asked to determine if I could identify any
12 of the articles sent to me, including this shirt, as the
13 articles depicted worn or carried by the bank robber in the
14 videotapes and the film images depicted.

15 Q. All right. Let's talk about -- let's stick to the shirt
16 for now, which is Government's Exhibit 11. And let me get
17 these out of your way here.

18 A. Could you explain to the members of the jury what
19 steps or processes you engage in in order to begin to try to
20 make an identification or at least do a comparison of the shirt
21 depicted in the bank robbery surveillance photos with
22 Government's Exhibit 11?

23 A. Okay. I will first review the specific videotapes, the
24 film, and find those images which best depict the object of
25 interest, in this case, the shirt.

1 A. Well, I am working off of the original in that I am taking
2 images from the original. We frequently receive tapes that are
3 copies. And we don't want to work off of the copies, because
4 just the mere process of making a video copy can make -- can,
5 can reduce the visibility of features.

6 That isn't the case with a digital copy, because I'm
7 getting the best possible copy off when I get my digital copy.
8 And that is fixed, I can look at that digital copy over and
9 over again and it will never change.

10 Q. All right. Now, so are you digitizing the entire video or
11 simply images of different frames of the video that you're
12 extracting from the original and making it into a hard copy,
13 for example?

14 A. Actually, I'm not -- the video is not made up -- it is made
15 up of thirty frames per second, approximately. But actually,
16 each frame consists of two fields, and I'm digitizing
17 individual fields and so getting specific still images from the
18 videotape for my analyses.

19 Q. So does that mean that there's sixty fields per second; is
20 that --

21 A. Approximately.

22 Q. All right. So what, what was your first step then as far
23 as extracting the best quality images of the shirt from the
24 original videotapes?

25 A. As I say, I reviewed the tapes on a deck, put them through

1 I will review all of the images using a professional
2 quality tape deck and VCR and look for those images that, in my
3 opinion, best depict the characteristics of, in this case, the
4 shirt.

5 I'm looking to get as many different views as possible
6 of the shirt, the front, the sides, the sleeves, the back.
7 Once I have determined which pictures are of most interest to
8 me, I will use something called a digitizer to convert the
9 video pictures into a digital image.

10 And the reason I put them into a digital image is
11 several fold. First of all, by converting it into a digital
12 image, I can then use digital image enhancement techniques to
13 enhance the visibility of features that I'm looking at.

14 And I can do that over and over again in a variety of
15 different ways. This also, by converting them to a digital
16 image and putting them into a computer, helps me preserve the
17 original videotape.

18 Once I've taken these digital images off of the
19 videotape, I can lock the video back up and let -- so that the,
20 so that the video is protected, and anybody else that wants to
21 look at the video at a later time will not have a video that's
22 been played over and over and over again.

23 Q. So you're not working off the original? In other words,
24 you're making a duplication, a digitized duplication of the, of
25 the video?

1 a device called a time base corrector, which helps insure that
2 the signal is locked up, what we call locked up, that I'm not
3 getting rolling or that the, that the image isn't jittery.

4 Then the image is fed into the computer where the
5 video picture is basically captured as a digital picture. Once
6 I've got it captured as a digital picture, it's just like a
7 digital picture that you might download from a digital camera
8 and use on your home computer.

9 I'll then take those pictures and do a variety of
10 enhancement steps viewing them on the computer. And once I've
11 got them enhanced to the point where I can see the best quality
12 images, I'll make prints of that using a photographic quality
13 printer.

14 Q. All right. So basically, are the, are the images on a
15 computer screen coming from the video and you're, you're --

16 A. Yes. I will watch them, I will watch them -- actually,
17 I'll watch them on a television monitor, and then they have to
18 be turned into digital images before they come up on the
19 computer monitor.

20 Q. So if you, so if you find an image that you like, then you
21 would convert that, that image from the VCR process to the
22 digital process?

23 A. Yes.

24 Q. And when you talk about enhancements, would you explain
25 what -- are you manipulating the image at all? Would you

1 please explain what you mean by enhancements?
 2 A. The fundamental enhancements that I'm using are no
 3 different than the knobs that used to be on televisions. You
 4 don't find many knobs on televisions these days. But
 5 brightness and contrast are the primary enhancements that are
 6 done in cases like this.

7 One other enhancement that is frequently used, and I
 8 used in this case, is something called unsharp mask. This is a
 9 technique that basically was developed for photograph -- for
 10 use in photographic dark rooms.

11 And it in -- what it does is it increases the
 12 visibility of very small details.

13 Q. After you find images that you like, you said you would
 14 then print out a hard copy of that image?

15 A. Sometimes.

16 Q. You've had -- have you had the opportunity to review the
 17 eight by ten photographs that have been introduced as evidence
 18 in this particular case with respect to the bank robbery images
 19 in each of the eight bank robberies?

20 A. Yes, I have.

21 Q. And who, in fact, printed out or downloaded and then
 22 printed out those particular images which originated from the
 23 original bank robbery surveillance videotapes?

24 A. I did.

25 Q. And again, you were printing out specific pictures to

1 demonstrate one thing in particular or many things?
 2 A. I printed out pictures to demonstrate many different
 3 things, because there were many different items for examination
 4 in this case.

5 Q. And I'm not going to go through all the exhibits, but you
 6 saw -- I showed you the book that had all the exhibits, for
 7 example, Government's Exhibits 1-C through G, which were all
 8 the photographs of Kislak; 2-D through I, the Commerce Bank;
 9 3-D through M.

10 I've showed you the photos from each of those bank
 11 robbery surveillance films?

12 A. Yes, you did.

13 Q. And those are your, those are your photographs that you
 14 were able to print for us?

15 A. Yes.

16 Q. Let's go back to the shirt now. You have the images coming
 17 from the bank surveillance photographs, from the videos, and
 18 you have the shirt in your possession.

19 Let's talk about the shirt now. What is it about the
 20 manufacturing process of shirts that might enable you to
 21 identify features of that shirt that could be then compared
 22 with image analyses?

23 A. Well, any, any comparison analyses involves a comparison
 24 of, first of all, the class characteristics. The class
 25 characteristics are those characteristics of an item that

1 enable you to differentiate it into different groups or
 2 classes.

3 If we were talking about people, I could say that
 4 there is a class of people that have red hair, and there are
 5 classes of people that have brown hair and black hair.

6 In a shirt like this, the class characteristics that
 7 we're talking about include such things as, does it have a
 8 pattern, which this shirt does, it has a plaid pattern or a
 9 checked pattern, if you will.

10 More specifically, you can look at the details of the
 11 pattern and see that there are broad dark lines and very narrow
 12 dark lines, and then there's some very light dark -- lighter
 13 lines. And basically, you can look at the details of the
 14 pattern itself and see what type of pattern it has.

15 Other types of characteristics, class characteristics
 16 that this shirt has is that it's collared, it also is a
 17 button-down shirt, it's not a pull-over, and it's a
 18 long-sleeved shirt.

19 Another class characteristic of this shirt that
 20 further reduces the class in which this shirt belongs is this
 21 light collar interior bit.

22 This piece has been sewn on and you don't just see the
 23 piece of material on the outside, but you actually see this
 24 light inside characteristic.

25 Those are the general class characteristics of this

1 shirt. And so the first thing one must do when making a
 2 comparison of any image is see if these class characteristics
 3 match.

4 Once one has done that and found that there is
 5 sufficient similarities and class characteristics that match,
 6 one can move on to look at the individual identifying
 7 characteristics.

8 Q. All right. So first -- so you took this shirt. You have
 9 your images. You looked at the various class characteristics,
 10 the things you've just described.

11 A. Uh-huh.

12 Q. The fact that it's long-sleeved, the fact that it's a
 13 pattern shirt, the fact that it has a white collar. And what,
 14 what, what were your initial findings?

15 A. All of the class characteristics of this shirt matched the
 16 class characteristics of the shirt worn by the bank robber in
 17 those cases that we could see the shirt.

18 Q. In fact, there were eight robberies and a shirt is visible
 19 in seven of those robberies; is that correct?

20 A. That is correct.

21 Q. And then the eighth robbery there's a black, what appears
 22 to be a black jacket of some type?

23 A. Yes.

24 Q. So having found that the class characteristics matched, you
 25 then proceed on to step two or the next step of your analysis?

1 A. That's correct.
 2 Q. Now, when you do these types of analyses and you're
 3 provided articles of clothing say in other cases, when you
 4 first do the class characteristic analysis, if the class
 5 characteristics are not the same, is there any need for any
 6 further examination?

7 A. Yes, there can be. And actually, this case provides an
 8 example of how the class characteristics may appear to be
 9 different but are not, in fact, different.

10 In each of these cases, we're dealing with black and
 11 white video. We're not talking about color video. And, in
 12 fact, even if we were talking about color video, there might be
 13 color differences because of the nature of the video process.

14 But because the video is in black and white, you're
 15 not going to see the colors of this shirt, but you're going to
 16 see them as they're represented in black and white.

17 And that is an apparent difference when one compares
 18 this shirt to the pictures from the videotape, which is easily
 19 explainable through this secondary analysis step of seeing how
 20 the video pictures were taken, and understanding that because
 21 it is a black and white video, the pictures are going to look
 22 different than from what your naked eye sees.

23 And to further show that fact, I will actually
 24 videotape this shirt in the laboratory to confirm that the
 25 appearance in black and white, the class characteristics, can

1 be recreated in the laboratory using the same type of cameras
 2 and lighting as were in the banks at this specific time.
 3 Q. So in other words, is lighting, the type of lighting that
 4 existed in the bank significant in your analyses when it comes
 5 to looking at a picture that appears to be whiter than the
 6 shirt in real life or darker than the shirt in real life?

7 A. Yes, lighting can be critical.
 8 Q. So you're saying in a lab situation you try to duplicate
 9 the lighting situation that existed in the bank?

10 A. Well, try to recreate it. Duplicate isn't always possible.
 11 We, we don't have as much space in the laboratory as some bank
 12 lobbies have, for example.

13 Q. Well, there were, you know, a number of banks involved here
 14 in the Southern District of Florida. Did you do research or
 15 take other steps to determine what the lighting conditions were
 16 or that exist in that bank with respect to the types of
 17 surveillance cameras that are set up in the bank?

18 A. Yes. I actually went to each of these banks that was
 19 depicted, that videotapes were sent to me from to confirm that
 20 my assumptions about what the lighting and the camera types
 21 were, were, in fact, true to what they were in the actual bank.

22 Basically, I confirmed my analyses in the lab of what
 23 type of lighting and what type of cameras were being used.

24 Q. And without getting too heavily into this, what, what are
 25 the differences in lighting that may affect the images as they

1 would appear to a lay person?
 2 A. Well, if we have -- if you have lighting such as the
 3 overhead lights that we have here, the fluorescent lights, that
 4 produces a very narrow range of light that isn't necessarily
 5 picked up very strongly by a video camera.

6 If you have something though like daylight, sunlight
 7 streaming in, the quality of sunlight is such that it can
 8 reflect differently off of, off of clothing or other items and
 9 can interact with the video camera in a different way,
 10 depending on what type of optics are included in the video
 11 camera.

12 Q. All right. So therefore, is it possible that the same
 13 shirt looks different in different video photographs from
 14 different banks solely as a result of the different lighting
 15 that may have existed in the bank when the photographs were
 16 taken?

17 A. Both the lighting and the cameras can have an important
 18 affect.

19 Q. And when those -- were those differences also applied to
 20 other features, for example, skin tone, the apparent skin tone
 21 of the robber as depicted in the bank video surveillance?

22 A. Yes, they can.

23 Q. So in other words, could it -- is it possible that the same
 24 robber could have appeared to have different skin tones and
 25 different -- of the photographs merely because of the lighting

1 conditions in the bank and also the type of camera equipment
 2 that was operating?

3 A. Yes.

4 Q. Let's -- going back to the shirt now. You talked about the
 5 fact that the shirt matched the class characteristics of the
 6 shirt that appeared to be depicted in the bank surveillance
 7 photographs.

8 So what is the next step of your analysis to see if
 9 you can narrow it down?

10 A. The next step involves looking at the individual
 11 identifying characteristics. Going back to the analogy of
 12 people, if I were trying to differentiate one person from
 13 another and reach a positive identification, then I would need
 14 individual identifying characteristics, such as moles, scars,
 15 freckle patterns, chipped teeth.

16 These, these features enable you to really
 17 differentiate people down to saying, this person is unique from
 18 all other people.

19 In the case of this shirt, we would first like to find
 20 things like holes, tears, paint stains, which might be the
 21 proper -- which might have resulted from random day-to-day wear
 22 and tear. No such features are found on this shirt.

23 However, because this shirt is a patterned shirt,
 24 there are individual identifying characteristics that are
 25 actually manufactured into the shirt, into the shirt based upon

1 the pattern, and that has to do with the way that the shirt is
 2 -- the pieces of the shirt are cut out and then sewn together.
 3 Q. All right. Could you -- and I probably interrupted you
 4 about to do it. But would explain the manufacturing process
 5 based on, you know, your knowledge as to how shirts of this
 6 nature would be made in a factory?

7 A. Okay. A lot of people think that everything's done by
 8 computers these days, but it's not the case when you talk about
 9 clothing manufacturing.

10 It's a lot less expensive for companies that are
 11 manufacturing things like blue jeans or shirts to have people
 12 doing the sewing by hand.

13 It's a lot easier to train a person to sew things like
 14 shirts and jeans together than it is to figure out how a
 15 computer can do it.

16 The way this process starts is that you start off with
 17 a huge bolt of cloth that can be hundreds and hundreds of yards
 18 long. The cloth is then laid down at a cutting plant on a
 19 table that may be about a hundred yards long.

20 Now, these huge bolts will be rolled out on the table
 21 and then rolled back on itself until the entire roll is done.
 22 Then another roll is attached to that one and it continues
 23 until you have on the order of five hundred plies of material.

24 Now, because of the way that that material's rolled
 25 back and forth, this pattern is not going to line up from one

1 its closest proximity so that they are wasting as little of
 2 that fabric as possible.

3 These companies are in the business to make money and
 4 cloth costs money. So they're trying to get as much -- as many
 5 pieces cut out of every single roll as they can.

6 Now, they don't get the same number of orders for
 7 small, medium, large, extra large and extra extra large every
 8 time. Every different shirt that they cut will probably have a
 9 different number.

10 And that's all because of the, the way the fashion
 11 industry works. They may decide that this shirt is not going
 12 to be as appealing to a certain group or another.

13 And so basically you have -- you'll have a different
 14 pattern from which they're cutting out every time these shirts
 15 are made.

16 And once you get all those pieces cut out, they, they
 17 slap it down and they will actually have people get on there
 18 with jigsaws and cut them out by hand.

19 Or in some of, some of the plants they'll have
 20 computers that can manage the cutting out. But most of the
 21 time, it's people doing it by hand, using, using a jigsaw like
 22 you would have in your wood shop.

23 Once all of those pieces are cut out, they're then
 24 transferred over to the sewers, to the people that are doing
 25 the piecework in manufacturing.

1 ply to the next, okay?

2 So that if I were looking at this dark line here that
 3 you can see on the edge of the, of this collar here, if I were
 4 to look at that dark line on the top layer, then chances are on
 5 the next layer below it, I'm not going to see that dark line,
 6 okay?

7 And so on and so on down below. Or if I do, it'll be
 8 offset a little bit.

9 Q. When you say you're not going to see it, you're saying
 10 you're not going to see it directly --

11 A. Directly underneath.

12 Q. -- proportional right exactly lining up one layer after the
 13 other?

14 A. Correct.

15 Q. Okay. And how does --

16 A. Now --

17 Q. And how would -- go ahead.

18 A. Once, once the fabric is laid out and you've got five
 19 hundred plies on top, the manufacturers lay out basically
 20 tracing paper that has cutting patterns.

21 Just like if you were sewing at home and making your
 22 own clothes, you would have a pattern to cut out, only this is
 23 a hundred yards long.

24 And that has been designed by engineers whose only job
 25 is to figure out how best to place each piece of this shirt in

1 And you've got people who do nothing all day but sew
 2 on sleeves onto shoulders or yokes onto the back.

3 Q. What do you mean by a yoke?

4 In fact, how many pieces, how many pieces of --
 5 separate pieces of cloth actually go into the making of that
 6 particular shirt?

7 A. Well, this particular shirt, we can count them. If you --

8 Q. And these pieces, they're all cut out by basically a
 9 pattern, so there will be like thousands of pieces for the

10 collar and thousands of pieces for the sleeves and so forth?

11 A. Every, every -- if you have five hundred plies thick,
 12 you'll have five hundred collar pieces in one particular area.
 13 Now, you may have pieces for a small right next to an extra
 14 large and so on down.

15 And this is, this is where there are engineers who are
 16 getting paid a lot of money to try and figure out which, which
 17 groupings work best to get the most cuts out of a single cut.

18 So we've got -- on this shirt, we've got two pieces on
 19 the collar. If you look closely at this shirt, you'll see that
 20 there's actually a piece here that appears on the outside and a
 21 piece on the inside.

22 There's another piece that goes around the collar, so
 23 that's three piece; there's a front panel, right front panel
 24 and left front panel, five pieces; two pieces for the pockets,
 25 seven pieces.

1 There's actually something called the platen, this is
 2 the piece that runs down the middle of the shirt and provides
 3 strength for this, since this is where all of your action is
 4 when you're buttoning this, so that makes eight.

5 The yoke is actually the piece here that occurs across
 6 the back of the neck. You can see that there's a, there's a
 7 place here a couple inches below the neck where you have a
 8 break in the pattern, where the bottom is different from the
 9 top, that's the yoke. And that --

10 What am I up to, ten?

11 JUROR: Nine.

12 THE WITNESS: Nine. Thank you.

13 The back is ten; each of the sleeves are another two
 14 pieces, that's twelve; you've actually got on this shirt the
 15 cuffs, which makes fourteen.

16 And then attached here to the cuff itself and here on
 17 this gap where the cuff opens there are another two pieces that
 18 are reinforcing strips.

19 So that makes sixteen pieces, sixteen pieces of this
 20 same pattern cloth on this shirt.

21 BY MR. STEFIN:

22 Q. All right. And so what significance does that have in
 23 terms of determining whether or not -- you know, identifying
 24 the uniqueness of a particular shirt as opposed to any of the
 25 other shirts that are manufactured by the plant using that same

1 cloth coloring?

2 A. Well, as I mentioned before, every one of those pieces is
 3 cut out. The plies line up on every row. And so you will have
 4 pieces --

5 If, in the manufacturing process, they happen to take
 6 a piece from the top layer and try to stitch it to a piece from
 7 the next layer down, you're going to get a lot of randomness in
 8 this process.

9 Because there is this offset, you're not going to get
 10 this pattern lining up across the seem in any consistent way
 11 from one shirt to the next.

12 In particular, no attempt is made to make those
 13 patterns align. And, in fact, you can't get a curved seem like
 14 this to have an alignment across it, because it isn't
 15 geometrically possible.

16 Now, you look at the pockets on this shirt and you'll
 17 see that they line up. Just the fact -- and it's -- just the
 18 fact that one of these pockets lines up makes this shirt twice
 19 as expensive to manufacture as it would be if this pocket were
 20 on the bias.

21 And the reason for that is that they have to make sure
 22 that this pocket is cut out in exactly the same orientation as
 23 the front panel.

24 Now, furthermore, they have to actually have a human
 25 being take the time to physically line this pocket up when

1 they're sewing it and make sure that that lines up as they're
 2 sewing it.

3 Putting this pocket -- just putting this one pocket on
 4 reduces the speed at which these shirts can be produced by
 5 fifty percent. It doubles the time it takes to manufacture
 6 these.

7 Whereas, a person making a shirt with pockets on the
 8 bias can get out two hundred in a day --

9 Q. Pockets on a bias, is that what you're saying?

10 A. A pocket on the bias means, means that the pattern doesn't
 11 align.

12 Q. So there's no effort to line up the pocket, in other words?

13 A. In other shirts. In this case, there is an effort to line
 14 up these pockets.

15 Q. Line up the pockets.

16 A. Right.

17 Q. Is there any effort to line up any of the other pieces of
 18 cloth? In other words, lining up the lines from the back to
 19 the sleeves, or the yoke to the sleeves, or the yoke to the
 20 front panels, or --

21 A. No. No. And you can see that for yourself just by
 22 comparing the way the left sleeve doesn't align with the yoke
 23 in the same way that the right sleeve aligns with the yoke.

24 MR. STEFIN: May the witness step down from the jury
 25 box --

1 THE COURT: Step down, sir.

2 MR. STEFIN: -- so he can show the jury what he's
 3 referring to in particular?

4 THE WITNESS: There are a lot of different types of
 5 lines.

6 MR. STEFIN: Why don't you stand a little bit in the
 7 middle here so --

8 THE WITNESS: There are a lot of, there are a lot of
 9 different, there are a lot of different types of lines that you
 10 can look at on this shirt.

11 But I'm -- because of the black and white nature of
 12 the video, I concentrate on -- there's basically two dark thick
 13 lines. There's this very dark one here.

14 MR. STEFIN: Can I hold one of these things for you?

15 THE WITNESS: Why don't you hold that out.

16 MR. STEFIN: Okay.

17 THE WITNESS: The lighting isn't all that good.

18 If you look here, you can see there's a very dark line
 19 that I'm pointing to, right here, along the edge of this seem,
 20 where the right sleeve meets the left sleeve.

21 That's a very thick line. If you go over a little
 22 ways, couple inches, you'll see that there's a dark black line
 23 that's very narrow, okay?

24 We get -- if you use that dark line --

25 MR. STEFIN: The lighting's not that great.

1 THE WITNESS: You can see that that dark line is here
 2 in the middle of a burgundy strip. And then, if you go over
 3 three and-a-half inches, it's in the middle of another burgundy
 4 strip. That's the repeat pattern on this shirt in that
 5 direction.

6 Now, there's a second thick dark line that's slightly
 7 less dark than the first one that I showed you that goes at
 8 angles, that is perpendicular to the other one. And you can
 9 see it here on the sleeve very well if you look at the dark
 10 lines here that are heading down the sleeve.

11 And then you've got these lesser, slightly less dark
 12 lines that are going in rings around the sleeves, the thick
 13 ones that are about to width of my finger, okay?

14 Those primary features, you can use those. And in
 15 particular, this very thin line. This thin dark line is
 16 actually a tenth of an inch across.

17 And so if you were to stack thirty-five of these thin
 18 lines one next to the other, then that would equal the three
 19 and-a-half inch repeat pattern that you see.

20 BY MR. STEFIN:

21 Q. In other words, if you measured from one of the thin lines
 22 to the next thin line, you'd measure out three and-a-half
 23 initials?

24 A. Approximately.

25 Q. So what, what can you conclude then with respect to the

1 pattern itself on this shirt?

2 A. Basically, the key here is that because we don't see the
 3 patterns matching across the seems, we can use that as a way to
 4 individualize this shirt relative to the other shirts that
 5 would be manufactured at the same time.

6 Q. Using the same colored cloth?

7 A. Yes.

8 Q. The same patterned cloth?

9 A. Yes.

10 Q. All right. So what would be an example of an individual
 11 feature -- and what, what do you call this when you find an
 12 individual feature?

13 Q. Individual identifying characteristic.

14 Basically, each seem that you're looking at can be
 15 considered on its own as an entire set of individual
 16 identifying characteristics. It's almost one big individual
 17 identifying characteristic.

18 In this case, if we look at where the right yoke meets
 19 the right front panel, there's this dark line, the thick dark
 20 line that I've been talking about, that comes down from the
 21 neck and it terminates here, about two-thirds of the way across
 22 the panel.

23 And it actually, the tip of this just goes beyond this
 24 dark line here.

25 Q. So that's the intersection --

1 A. So that's the intersection of those two panels there.

2 Likewise, if we look at the left sleeve, I point out
 3 that dark, that very thin dark line here, which is coming up
 4 the right sleeve.

5 It almost exactly meets the point where the yoke joins
 6 the front panel. You could run your finger up that black line,
 7 that small black line and run right into that seem that I was
 8 just pointing to earlier.

9 Likewise, if we go to another area -- let's look at
 10 the collar itself. You'll see that the collar has a very dark
 11 line that actually nips the corner, just, just cuts the corner
 12 of the button hole on this side.

13 And that is paralleled on the other side, because it's
 14 one piece, okay? So that's another individualizing
 15 characteristic for this shirt.

16 Just one more example. If we look at the yoke, where
 17 the yoke meets the back, you'll see that we've got these dark
 18 lines, dark vertical lines on the back that don't line up with
 19 these slightly less dark lines on the yoke.

20 They made no attempt whatsoever to match those,
 21 because they don't need to. They have no interest in it.
 22 People -- the public doesn't demand that of a shirt like this.

23 Q. All right. And did you take precise measurements of these
 24 types of lining up of the different -- the thick lines or the
 25 thin lines in order to further identify, you know, the

1 individual characteristics of this particular shirt?

2 A. I measured the widths of these features on this shirt so
 3 that I could figure out how -- what the relationship would be
 4 between pieces meeting on one side with these meeting on the
 5 other side.

6 Q. And I think you said that the pattern repeats basically
 7 every three and-a-half inches?

8 A. Yes. Basically, this, this dark line, if we just repeat
 9 going from this dark line to the next dark line, it's three
 10 and-a-half inches.

11 And so if, using a --

12 Q. The thick line or the thin line?

13 A. The thin line. Each, each of these, each of these features
 14 repeats every three and-a-half inches. It's just that the thin
 15 line is the smallest feature that we can see very easily.

16 Q. So you were using the thin line as a point of reference in
 17 measuring out the three and-a-half inches?

18 A. Exactly. And recall that I said there's the curved
 19 surfaces here where the sleeve meets these other seems. That
 20 would complicate any type of repeat analysis, because since
 21 it's not a straight line that's going perpendicular to that
 22 feature, it's actually going to be longer.

23 So basically, if we did have a single seem that we
 24 were trying to match this pattern to one across it, the chances
 25 of that very thin dark line matching up, matching up or at

1 least touching the black line on the other side, would be one
2 in thirty-five through random processes.

3 Q. Could you explain that, explain that a little bit, how you
4 came up to the one in thirty-five?

5 In other words, two pieces of cloth in the
6 manufacturing process just for this one seem goes into the -- I
7 don't know, should we work with the back, the back, and this
8 would be the left sleeve?

9 A. Sure.

10 Q. So you have two pieces of cloth.

11 A. Well, no. Let's --

12 Q. Go ahead.

13 A. Let's not. Let's use, let's use the yoke and the sleeve.

14 Q. Okay.

15 A. Okay.

16 Q. And the yoke, again, is this back --

17 A. The yoke is this --

18 Q. -- panel?

19 A. -- back panel up on the neck.

20 Q. And you can feel the seem right here?

21 A. Right. Because -- and I'm using the yoke in the back
22 because they're almost aligned. They're almost aligned so that
23 you could draw a straight line across. And, and it would be
24 perpendicular to this, this long dark line.

25 You can see here that on the yoke the dark line is

1 right here just below, slightly below the seem here. And you
2 have to go about half an inch down before you hit the black
3 line on the other side.

4 Q. Okay. In other words, you can measure the distance between
5 the black line on the yoke to the black line on the sleeve, and
6 you measured, say, a half an inch?

7 A. Yeah.

8 Q. All right. And so just taking that one point of reference,
9 what would be the odds that two shirts coming out of the same
10 manufacturing plant being manufactured in this, in this method
11 would end up having the same alignment of the yoke and the
12 sleeve, whereby you would have this --

13 Did you say a half an inch?

14 A. Half an inch off.

15 Q. -- half an inch offset between them just for this one point
16 of identification?

17 A. Just for that one point, it would be a one in thirty-five
18 chance.

19 Q. And how did you come up with the number that it's a one in
20 thirty-five chance of probability that these two items would
21 line up the same in more than one shirt?

22 A. Because the feature itself that I'm looking to align is one
23 thirty-fifth of the overall repeat length. And so to see that
24 random -- to see that one feature come up randomly happens one
25 in thirty-five times.

1 Q. All right. And again, you're talking about the small line,
2 which is --

3 A. The very small dark line.

4 Q. -- which is your point of reference?

5 A. Yes.

6 Q. So one in every thirty-five shirts manufactured by the
7 company using this patterned cloth, the exact same cloth, you
8 could say that one in thirty-five probability-wise would come
9 up with the exact same alignment between the yoke and the left
10 sleeve?

11 A. That is correct.

12 Q. Now, would the same randomness apply to all the other
13 features in pieces of cloth that go into the shirt?

14 A. Yes, they would.

15 Q. So, if you were able to, for example, reach a measurement
16 as far as the left sleeve is concerned with the yoke, would the
17 line up be anywhere -- would the line up be the same or would
18 it be, again, random with respect to the right sleeve?

19 A. There's going to be a one in thirty-five chance that it's
20 going to be the same on the right sleeve as it is on the left
21 sleeve.

22 Q. All right. So if you were able to find, say for example,
23 from the photographs two points of identification, whereby the
24 photograph matches the shirt in one area, say the yoke to the
25 sleeve on the left side, and then you're able to find a second

1 point of comparison or identification, say on the right sleeve
2 and the yoke, what would be the odds of two shirts randomly
3 being manufactured coming from the factory that would match
4 this particular shirt?

5 A. It would be one in thirty-five times one in thirty-five.
6 But to simplify things and to be conservative, I prefer to use
7 one in thirty.

8 By saying one in thirty, that's -- it's giving it a
9 better chance of being the same, but it makes the math easier.
10 Thirty times thirty is nine hundred.

11 So one in nine hundred chance that you're going to
12 find another shirt that has the left sleeve aligned to the yoke
13 the same way and the right sleeve aligned to the yoke in the
14 same way.

15 Q. All right. Now, let's say you were -- you have a good
16 enough picture that you can make three points of
17 identification.

18 Let's say you're able to identify the
19 pattern on the left -- on the yoke to the left sleeve and the
20 yoke to the right sleeve, but also then you have the back that
21 you're able to identify as a third measure of identification.

22 A. Well, that would be just -- the next step is just doing the
23 back to the yoke. We're not talking about the back to the
24 sleeves, because that adds even more.

25 But if we had sleeve to yoke, yoke to back and yoke to

1 sleeve, then that's thirty times thirty times thirty, which is
2 one in twenty-seven thousand.

3 Q. So if you were able to make three items of -- points of
4 identification, the odds would be one in twenty-seven thousand
5 that there would be two shirts randomly made from the factory
6 that would have those three points of identification exactly
7 the same?

8 A. Correct.

9 Q. All right. And would it suffice to say that if we keep
10 doing the math and if you're able to find four points of
11 identification, then that would be thirty to the fourth power,
12 thirty times thirty times thirty times thirty?

13 A. That's correct.

14 Q. And if you found five points of identification, it's thirty
15 to the fifth power?

16 A. That's correct.

17 Q. Thirty to the sixth power, thirty to the seventh, depending
18 on the various points of identification?

19 A. That's correct.

20 Q. And were you able to actually make those types of
21 identification with respect to the photographs depicted in the
22 bank robbery surveillance photos with this shirt, Government's
23 Exhibit 11?

24 A. Yes, I was.

25 Q. And what was the highest number of points of identification

1 that you were able to match up with respect to any particular
2 bank robbery photo -- in the surveillance photographs with
3 respect to this shirt?

4 A. Eight.

5 Q. Eight points of identification?

6 A. Yes.

7 Q. So thirty to the eighth power, would that, would that be
8 the odds in which two shirts would be randomly manufactured by
9 the company, having all those eight points of identification,
10 lining up exactly the same?

11 A. That's correct.

12 Q. And does your pocket calculator actually print out all the
13 numbers that would come out if you were to insert thirty to the
14 eight power?

15 A. No. It came out to be six point five times ten to the
16 eleventh, which is basically six hundred fifty billion, give or
17 take a few billion.

18 Q. And if you weren't -- and did you, during your research,
19 contact the -- this is a Van Huesen shirt that we've been
20 talking about.

21 Did you, in fact, contact the Van Huesen company or
22 the factory to determine whether they could tell you
23 approximately how many shirts using this particular cloth and
24 cloth pattern were actually manufactured by the company?

25 A. I did contact the Van Huesen company.

1 Q. And approximately how many shirts using this cloth and this
2 design were made by them?

3 A. They do not keep records of every single shirt that they
4 ever make, but they have people who recognize patterns and they
5 also know what their typical runs are.

6 And at most, they said they would have made about no
7 more than eighteen thousand of these shirts.

8 Q. For distribution throughout the United States?

9 A. That's correct.

10 Q. Did you prepare illustrations, charts comparing the
11 photographic evidence, that is, the bank robbery surveillance
12 photos, with photos that you took of this, of Government's
13 Exhibit 11, so that we could do a side by side comparison of
14 these points of identification that we've been talking about?

15 A. Yes, I did.

16 Q. All right. Let me just get the chart here. I think the
17 first robbery was the Kislak Bank robbery?

18 A. That -- yes.

19 Q. Let me show you Government's Exhibits VB, for Vorder
20 Bruegge, 1-G, 1-E and 1-C. Are these charts that were prepared
21 for you -- prepared by you?

22 A. Yes. VB -- Exhibits VB1-G, VB1-E and VB1-C are charts
23 prepared by me.

24 Q. All right. And do these -- are these -- were these charts
25 prepared extracting bank robbery surveillance images from the

1 Kislak National Bank robbery, which occurred on January the
2 20th of 2000?

3 A. Yes, they were.

4 Q. And, in fact, these photographs or at least the photograph
5 of the robbery on the left-hand side came right from the
6 surveillance photos themselves?

7 A. Correct.

8 Q. All right.

9 A. On every one of the charts that I will be presenting, on
10 the upper left-hand corner there is a full-frame view of the
11 entire picture from which I extracted an enlargement that
12 appears immediately below it.

13 MR. STEFIN: Your Honor, at this time, we would like
14 to offer into evidence VB1-C, G and E.

15 MR. HOWES: Your Honor, both of my continuing
16 objections I'd like to renew as to all of these items.

17 THE COURT: The renewed objections will be overruled.

18 [Government Exhibit Numbers VB1-C, G, and E were
19 marked and received in evidence].

20 BY MR. STEFIN:

21 Q. Tell us what we have here in the --

22 A. All of these charts are entitled photographic comparison
23 and questioned unknown shirt. On the top left it says,
24 questioned shirt, Kislak National Bank, January 20th, 2000,
25 image from Q-1 video. Q-1 is the reference number that I

1 placed on the video tape upon receiving it in the lab.
 2 The image from the bank is shown in the top left. In
 3 the middle at the top is an image that I took of myself wearing
 4 the shirt in question, modeling it in a fashion that would
 5 attempt to replicate the view seen in the bank photo.

6 THE COURT: Excuse me. I know the lighting's bad, but
 7 if I turn those lights on, it's going to be like a rotisserie.
 8 That's why those lights aren't on.

9 Because the most common complaint is that it's like
 10 those things you see in the grocery store where they keep the
 11 chickens. And I think you'd rather look at them individually
 12 when you get them rather than get fried in there.

13 Go ahead.

14 THE WITNESS: On the left -- on the far right-hand
 15 side is a color image of the shirt as it might appear to the
 16 naked eye.

17 At the bottom is an enlargement of the image from the
 18 bank with a number of arrows pointing out points of
 19 identification and alignments of features.

20 In the middle on the bottom is the same picture of
 21 myself wearing the shirt with arrows located in the same
 22 position.

23 Now, let's just start at the top here at the collar.
 24 You can see the very dark line that occurs. And towards the
 25 back of the shirt, the dark line actually looks like it almost

1 touches the bottom of the collar.

2 Whereas, as it gets closer to the tip of the collar,
 3 you see that you're actually getting a little bit, a little
 4 piece of lighter material behind it.

5 If you look at the shirt that I'm wearing, you see the
 6 same feature, the fact that that dark line appears to extend
 7 away from the edge of the collar leaving a bright tip on the
 8 corner. That's feature one.

9 If we then look at the joint, the point where the yoke
 10 joins the front panel, the right front panel, you can see what
 11 appears to be a dark line going -- extending from the collar
 12 out towards the front panel, this is on the yoke, where it then
 13 meets the seem and it terminates in this sharp line that also
 14 is intersected by a dark line coming up from the front panel.

15 If we look at his shirt worn by the bank robber here,
 16 you see a line that terminates right against -- from the yoke
 17 on the dark line that comes up from the right front panel.
 18 That's two.

19 If we then look further down on the right sleeve, you
 20 see that very narrow dark line that I was pointing to before,
 21 that appears to intersect the seem where the yoke and the front
 22 panel meet. You can also see that occurs right here on the
 23 shirt worn by the bank robber in Kislak.

24 Because of that, if you then look at the yoke and you
 25 look at the front panel, you'll see that the shirt, the sleeve,

1 the right sleeve aligns with both the yoke and the panel. So
 2 that's points three and four.

3 BY MR. STEFIN:

4 Q. Points of identification?

5 A. Points of identification.

6 If we then take the next chart, we have another view.
 7 This is Government's Exhibit VBI-E. The first chart was VBI-C,
 8 I believe.

9 VBI-E is focused on the left shoulder of the
 10 individual. In this case, this is, this is the same bank. You
 11 can see --

12 Q. This is just another image from, shot from the surveillance
 13 photo from the Kislak National Bank, the same robbery, just a
 14 different --

15 A. Correct.

16 Q. -- different angle, different image?

17 A. That's right.

18 Q. We see the blow-up of the actual shirt that you, that you
 19 took in your lab; is that correct?

20 A. On the far right-hand side is the color image that I took
 21 in the laboratory showing the left shoulder of the shirt.

22 Q. It shows the left shoulder with the yoke --

23 A. It shows the yoke and the front panel and the left sleeve,
 24 as well as the collar.

25 Q. All right. You capture all of those five items. And then

1 you captured again, using yourself as a model --
 2 A. With a video camera in the laboratory.

3 Q. And you're trying to duplicate the same lighting conditions
 4 when you take the black and white?

5 A. Approximately, yes.

6 Q. And try to duplicate the -- try to model the way that the
 7 robber appears in the surveillance photo in that particular
 8 frame?

9 A. Yes. We, we have, we have mannequins in the lab that we
 10 will use from time to time, particularly if we've got evidence
 11 that we would rather not wear.

12 Q. This wouldn't work for certain --

13 A. But there also are matters of draping, that the individuals
 14 who are in the banks aren't necessarily -- and are robbing them
 15 aren't necessarily concerned about making sure that everyone
 16 could see all the details of the patterns, so there may be
 17 folds and creases.

18 And those things have to be taken into account when
 19 conducting this type of examination, because you can get
 20 shadows that look like dark lines when they're just shadows
 21 because of creasing. And that's what's actually happening on
 22 the right front on this shirt that the bank robber's wearing.

23 But if you look at the yoke where it meets the left
 24 panel, you can see in this image of me there is, again, this
 25 point where the dark line is meeting this diagonal line coming

1 down off of the yoke at approximately the same place.

2 And you can see that here there is a dark line that's,
3 that's interspersed in with some shadows to see that then we've
4 got the left front panel, as well, matching up with the yoke.

5 Then you can also look and see on the left shoulder --
6 remember how on the right shoulder we had that very narrow line
7 that met the seem?

8 In this case, we've got one of these fat lines, one of
9 these fatter dark lines that matches up where the seem is
10 occurring. And we could see that here, where this bottom most
11 red arrow is placed.

12 Now, if you move over to the right of that, you'll see
13 that there's an inter, interspersing of these fat dark lines,
14 as well as the thin narrow line.

15 Where right here, at the right most arrow, points to
16 where this dark line comes off of the yoke and meets the right
17 edge of the thick dark line coming up from the side.

18 You can see that here on the left most, on the, on the
19 left most image in this picture.

20 Q. Okay. So, so we had three points of comparison or
21 identification --

22 A. Actually --

23 Q. -- in the first, in the first image?

24 A. -- four. Because we have the collar, the yoke, the front
25 panel and the sleeve, okay?

1 Q. So --

2 A. I'll, I'll note that the very, the very top arrow at the
3 back of this shirt, if I may, the Government's Exhibit 11,
4 there actually are gathers in the middle of this where it's,
5 it's, it's, it's cinched up, the material is actually --
6 there's, there's a pleat. And when -- and that can fold in and
7 be effectively recreated.

8 If you look closely, here you see that at the top of
9 this pleat, there are two, there are actually two dark lines
10 that overlap where the pleat is and it spreads out. And that's
11 something that's recreated in this view as well.

12 So from Kislak we have eight different points of
13 comparison, each of which conservatively would be a one in
14 thirty chance.

15 Q. Thirty to the eighth power that two shirts were
16 manufactured identical with eight points of comparison?

17 A. Correct.

18 Q. All right. And did you do the same type of analysis with
19 respect to six of the other seven bank robberies --

20 A. Yes, I did.

21 Q. -- that you were supplied materials for?

22 A. Yes.

23 Q. All right. I'm going to try to move along a little quicker
24 now that you've kind of explained it. Let's go to the second
25 bank robbery, which would be the Commerce Bank.

1 Q. Let's go back to that so we could show --

2 A. Collar, yoke, front panel and sleeve is four. We've now
3 got the yoke to the front panel, to the front left panel, as
4 opposed to the front right panel, that's five, as well as the
5 sleeve, the left sleeve to the yoke, six, and to the left front
6 panel, seven.

7 Finally, if we go to the last chart from Kislak, which
8 is Exhibit VB1-G, the individual --

9 Q. By the way, the 1-G, at the end of -- if you remember, at
10 the end corresponds to the photograph which appears in this
11 exhibit. That would be photograph 1-G, the Kislak --

12 A. So photograph 1-G, in the upper left-hand corner, is what
13 is in VB1-G.

14 The bank robber was leaning down --

15 Q. Bending down.

16 A. -- bending down so that we could see his back. And,
17 therefore, we could see the alignment --

18 Q. This is an enhancement of that.

19 A. -- of the yoke at the lower, at the lower left. There's an
20 enlargement, an enhanced view of the back of the bank robber
21 with arrows pointing out to some of the points where the
22 alignment was noted.

23 And basically, all of these arrows -- and the arrows
24 on the bottom point out to places where the yoke matches up
25 with the back piece. So the back piece is the eighth piece.

1 First of all, let me ask you to identify each of these
2 exhibits. Just take a look at the back of each one of these.
3 VB2-D -- let's go through it -- let me just go through it with
4 you. VB2-D, VB2-F, 2-II and 2-I.

5 And ask you again, are these all charts that were
6 prepared by you from the bank robbery surveillance photographs?
7 A. Yes, Government's Exhibit VB2-D, VB2-F, VB2-II and VB2-I
8 are all charts that I prepared.

9 MR. STEFIN: Your Honor, we'd like to offer into
10 evidence those exhibits --

11 MR. HOWES: Your Honor, I would note my same
12 objection.

13 MR. STEFIN: -- 2-D, 2-F, 2-I and 2-II.

14 THE COURT: The objections will be overruled. The
15 exhibits will be received in evidence.

16 [Government Exhibit Numbers 2-D, 2-F, 2-I, and 2-II
17 were marked and received in evidence].

18 BY MR. STEFIN:

19 Q. All right. Now, can you illustrate what points of
20 comparison and findings you were able to make with respect to
21 the Commerce Bank robbery from the films and video?

22 This was, this was the robbery that there's also a
23 thirty-five millimeter film as well as the video; is that
24 correct?

25 A. That's correct. Two of these charts will actually be --

1 depict film images rather than video images. That's 2-I and
2 2-II, which you will see momentarily.

3 The image -- Exhibit VB2-D, which is again entitled
4 photographic comparison and questioned unknown shirts, includes
5 the image, which is 2-D, showing the bank robber at the far
6 left-hand side of the image.

7 Now, this is a very good shot, because we get a very
8 good view of the shoulder area, the right shoulder area where
9 the sleeve comes in to meet the seem, and arrows are here
10 indicating again the alignment of features.

11 As we noted in the other robbery, we have the dark
12 line on the collar that is close to the edge of the collar
13 towards the back, and is farther away from the collar when you
14 get to the tip, which is item one.

15 We have this diagonal line that extends from the yoke
16 and meets the front panel here, right above this dark linear
17 feature, and is just to the right of this dark line, very
18 narrow dark line.

19 Then if we go down to where the sleeve meets both the
20 yoke and the front, right front panel, you can see where the
21 dark lines and the very narrow dark line meets up right with
22 that point of identification.

23 And so we have, again, the same four points that we
24 were looking at in the other bank, the collar, the yoke, the
25 right front panel and the right sleeve.

1 front panel meets the right sleeve in this image, as we had in
2 the other images, we can also see where the left sleeve meets
3 the right sleeve in this case with the left front panel --
4 sorry, the left sleeve meets the left front panel.

5 And you'll notice that right here, the bottom arrow is
6 pointing to the offset of a very dark line slightly offset from
7 one of the lighter thick lines, which occurs right here at the
8 bottom arrow here.

9 Likewise, we can go from the yoke down to where the
10 front panel terminates against the yoke. This red arrow that's
11 at the very top points to that diagonal line coming down, which
12 then meets the vertical line here coming up the front of the
13 panel. So that adds the -- both the left sleeve to the front
14 panel and the yoke to the front panel, making six.

15 Finally, if we look at the right-hand all the way out
16 at the end of the shirt, we can see that there's a slight --
17 there's an alignment of the very dark lines on the shirt with
18 the lighter lines on the cuff, so that these two light lines
19 here that are relatively thick almost exactly overlap these
20 dark lines here. This one in particular, with the arrow on the
21 left-hand most side, is aligned with that dark line.

22 Q. So what do we have now?

23 A. Seven.

24 Q. So seven points of identification with respect to the bank
25 robbery surveillance photos and the shirt with the Commerce

1 Q. And they both match up identical?

2 A. Yes.

3 Q. All right. And that's just one image from that, from that
4 particular bank robbery; is that correct?

5 A. Correct.

6 2-F, it simply reiterates more of this point of the
7 right front panel in that you can actually see those, those
8 slightly lighter vertical dark lines on the collar, which are
9 perpendicular to the darkest thick dark line.

10 Right here and here, where the white arrows are, you
11 can actually see where the alignment of these lighter features
12 are relative to the pieces on the yoke and the front panel.

13 I'll note that the spacing between these relatively
14 two light lines, which are -- intersect my chin, you can see
15 they're spaced more closely together than is the next one,
16 which is repeated here in the bank robbery image, okay?

17 Q. So is that another point of identification?

18 A. No, this is, this is just further, this is just further
19 reiterating the collar match to the other feature.

20 If we now look at these -- what is labeled 2-II,
21 VB2-II, this is a film image and so you'll notice a lot of
22 grain in this image. And that's actually the pieces of silver
23 that make up the constituent particles of this photograph.

24 If we look at the left side now, we have just been
25 looking at the right side, and you can see where the right

1 Bank robbery?

2 A. Yes.

3 Q. Let's go to the next robbery. It would be the First
4 Southern Bank. Let me show you Government's Exhibits 3-F, K
5 and L. Again, were these charts prepared by you from the bank
6 robbery surveillance photographs?

7 A. Yes, they were.

8 MR. STEFIN: Your Honor, at this time, we would offer
9 VB3-F, VB3-K and VB3-L into evidence.

10 MR. HOWES: Same objection.

11 THE COURT: The objection will be overruled. The
12 exhibits will be received in evidence.

13 [Government Exhibit Numbers VB3-F, VB3-K, and VB3-L
14 were marked and received in evidence].

15 BY MR. STEFIN:

16 Q. These are images from the First Southern Bank --

17 A. Yes.

18 Q. -- robbery of October 19th of 2000?

19 A. Yes.

20 Q. Go ahead and show the members of the jury what you found
21 there?

22 A. In the interest of time, I'm just going to simplify this.
23 VB3-F shows the left shoulder area of the bank robber, as well
24 as the left shoulder area of the shirt.

25 In it you can see where the left shoulder or the left

1 yoke meets the right -- or the left sleeve, as well as where
 2 the right sleeve meets the left -- the left sleeve meets the
 3 left front panel.

4 And the arrows here are also pointing to the place
 5 where the yoke meets the left front panel. So we have three,
 6 the sleeve, the yoke and the left front panel.

7 Q. Three points of identification?

8 A. Yes.

9 Q. That match?

10 A. Yes. The --

11 Q. This is another --

12 A. VB, VB3-K from the First Southern Bank shows the back right
 13 shoulder area of the bank robber. And it shows where the yoke
 14 and the back panel meet the right sleeve.

15 And basically we have the alignment of a light line
 16 from the back with a dark line on the sleeve, as well as the
 17 alignment of a dark line on the yoke with a dark line on the
 18 sleeve. So we have another one, two, three points of
 19 comparison in this image.

20 Finally, we go back to the right shoulder. And this
 21 just adds the collar to the number that we've assessed before,
 22 in that we can see a relatively dark line here on the collar,
 23 in about the middle of the collar, that lines up with the
 24 stripe that extends from the front panel back to where the
 25 yoke, where it meets the yoke.

1 In this image we can see the left shoulder area of the
 2 robber and his shirt. We can see at the very top the arrow is
 3 pointing to this diagonal line that comes down from the yoke
 4 and meets the left front panel, and the other arrows over there
 5 indicating the alignment of the thicker and thinner dark lines.

6 On the right-hand side, we have the alignment of the
 7 stripes from the sleeve, the left front sleeve, with both the
 8 front panel as well as the yoke, making three points of
 9 comparison.

10 In the next chart --

11 BY MR. STEFIN:

12 Q. Positive points of comparison?

13 A. -- VB4-K --

14 Similar points of comparison, yes.

15 -- we have the right shoulder in which we can see the
 16 right yoke -- or the right front panel and the right sleeve
 17 meeting up with the yoke, as well as with the right front
 18 panel, as well as where the right front panel meets the yoke,
 19 okay?

20 Here this feature --

21 Q. And the yoke is the strip in the back; is that correct?

22 A. Yes, the yoke is the strip on the back.

23 So we've basically got another three, the yoke, the
 24 right front panel and the right sleeve. Again, recalling that
 25 the right sleeve has that very narrow line that meets right

1 Q. So would that be another --

2 A. That would be seven, I believe.

3 Q. So the odds of this being random with two shirts, thirty to
 4 the seventh power?

5 A. If we use the thirty.

6 Q. Being conservative?

7 A. Yes.

8 Q. I'm showing you photos from the Bank of America, the
 9 charts. I'm showing you VB4-F, K and H -- oh, excuse me, 4-F,
 10 K and M.

11 Are those, again -- these are all charts that were
 12 prepared by you from the bank robbery surveillance photos at
 13 the Bank of America robbery?

14 A. Yes, Exhibits VB4-F, 4-K and 4-M were charts prepared by
 15 me.

16 MR. STEFIN: Your Honor, we would move those into
 17 evidence at this time.

18 MR. HOWES: Same objection.

19 THE COURT: The standing objection will be overruled.
 20 The exhibits will be received in evidence.

21 [Government Exhibit Numbers VB4-F, VB4-K, VB4-M were
 22 marked and received in evidence].

23 THE WITNESS: Exhibit 4-F is titled, on the upper
 24 left-hand side, questioned shirt, Bank of America, November
 25 24th, 2000, image from Q-5 video.

1 where the seem terminates.

2 Q. So that's --

3 A. That makes six.

4 And finally, in this VB4-M, we have the right collar,
 5 the right cuff and right sleeve of the individual with the dark
 6 lines coming from the sleeve terminating against the cuff where
 7 these relatively lighter dark thick lines are observed.

8 Q. That's one more point of comparison?

9 A. That would be seven.

10 Q. That would be the cuff to the sleeve?

11 A. Cuff to the sleeve.

12 Q. Of the right cuff to right sleeve?

13 A. Right cuff to right sleeve.

14 Q. That's seven points of identification with respect to the
 15 Bank of America shirt?

16 A. Yes.

17 Q. Showing you VB5-E, 5-EE, 5-D and 5-H. Were those charts
 18 also prepared by you from the bank robbery surveillance photos
 19 of the Bank United robbery?

20 A. Yes, 5-E -- VB5-E, VB5-EE, VB5-D and VB5-H are all charts
 21 that I prepared.

22 MR. STEFIN: Your Honor, we would move 5-E -- VB5-E,
 23 5-EE, 5-D and 5-H into evidence.

24 THE COURT: The standing objection will be overruled.
 25 The exhibits will be received in evidence.

1 [Government Exhibit Numbers VB5-E, VB5-EE, VB5-D,
2 VB5-H were marked and received in evidence].

3 THE WITNESS: In this one, VB5-E, we have the left
4 yoke and left sleeve of the robber depicted. In this case,
5 we're noting that the alignment of these very thick dark lines
6 is consistent from the left sleeve to the yoke on the left, and
7 providing us with two points of identification.

8 If we then go down, using the same photograph from the
9 videotape, but this time focusing on the cuff, where the left
10 sleeve meets the right -- meets the left cuff, you'll note that
11 whereas in the other case, we had two dark lines that appeared
12 to match, the lighter dark lines appeared to go from the cuff
13 onto the dark lines on the sleeve.

14 In this case, the two dark lines actually border the
15 two lines, the two dark lines from the sleeve. If you look
16 closely, there's a pleat actually in the left sleeve where it
17 meets the cuff in this area, which causes these two dark lines
18 to come together and approach one another, which you see right
19 here marked by the black arrows on the far left-hand side.

20 Therefore, that gives us another point of
21 identification, a second one on this shirt to go along with the
22 left sleeve and left yoke.

23 BY MR. STEFIN:

24 Q. Okay. So that's what, three?

25 A. Yoke, sleeve, cuff, three.

1 Q. Okay.

2 A. Now we look at the back of the bank robber in VB5-D.

3 Q. The back shot of him?

4 A. Back shot, yes, where we can see the yoke and the back
5 panel of the shirt.

6 And the point where the yoke terminates against the
7 back is marked by basically a gap in the pattern, where we have
8 these two stronger dark lines, horizontal lines along the yoke,
9 and then no more strong horizontal lines that we see in that
10 pattern, because the dark lines here on the back are going
11 vertically, the darkest lines.

12 Likewise, we can align the vertical lines on the yoke
13 with the vertical lines on the back and see that there is an
14 alignment of those features, making this the fourth point of
15 comparison.

16 Finally, with VB5-H, we're looking at the right back
17 side, back shoulder of the robber. And if you look closely at
18 the shirt on the bottom right, where I'm wearing it, you can
19 see that the two darkest lines actually appear to be slightly
20 wider apart than the two dark lines on the yoke.

21 This is reflected in the image from the bank robbery
22 where we've got these two wide lines, two widely spaced dark
23 lines meeting up with the more closely paired dark lines on the
24 yoke, making that five.

25 I believe we had -- yes, we had the right sleeve, the

1 right cuff, the right yoke, the yoke on the back and the yoke
2 on the sleeve, five.

3 Q. Five positive points of comparison?

4 A. Right.

5 Q. Okay. SouthTrust. Showing you Government's Exhibits
6 VB7-K, VB7-H, VB7-D, VB7-J and VB7-I. Were these all prepared
7 by you from the bank surveillance photographs of the SouthTrust
8 robbery?

9 A. Yes, they were.

10 MR. STEFIN: Your Honor, at this time, we would offer
11 those into evidence.

12 THE COURT: The standing objection will be overruled.
13 And they will be received in evidence.

14 [Government Exhibit Numbers VB7-K, VB7-H, VB7-D,
15 VB7-J, VB7-I were marked and received in evidence].

16 THE WITNESS: VB7-K, taken from the SouthTrust Bank.
17 We're looking at the left shoulder of the individual in
18 question, the left shoulder of the shirt.

19 In this case, the arrows are pointing to the alignment
20 of the left sleeve to the left yoke. We have the -- the major
21 dark lines you can see are offset in the same way.

22 The two red arrows that are aligned with the seems
23 just are there to point out where the seem is so that you can
24 see where these offsets are. We have two points of comparison
25 here, the yoke and the left sleeve.

1 If we then go to the next photo, the next chart,
2 VB7-H, in addition to showing the left sleeve to the left yoke,
3 it also shows the left sleeve to the left front panel in which
4 we've got the alignment of the left sleeve to the left front
5 panel.

6 7-D shows the left sleeve and left cuff of the
7 individual in this case. We've got basically a single light
8 wide band -- dark -- darker -- dark, but light band on the cuff
9 that is offset from the dark lines on the sleeve, as well as
10 the fact that the sleeve is terminated just after one of these
11 relatively light bands that loops around the shirt here and
12 here.

13 Likewise, you can actually see in the image from the
14 bank the very narrow black line on the cuff here that's
15 positioned identical to its position in the questioned image.

16 BY MR. STEFIN:

17 Q. All right. So that makes it a third point of comparison?
18 A. We have, we have the yoke, the left front panel and the
19 left cuff, that's four.

20 Then we have here in 7-J, we have the yoke, the
21 alignment of the yoke to the back, for six -- or five, and the
22 alignment of the left -- the right sleeve to the back, which is
23 six.

24 Finally, in 7-I, there is the right sleeve and the
25 right cuff. Where again, in contrast to the left sleeve, where

1 the two lighter ones border the narrow ones coming together, in
 2 this case, we have two lighter ones are bordered themselves,
 3 are almost aligned with the dark lines from the sleeve, making
 4 six.

5 Q. Want to start again? I have seven.

6 A. I think seven is --

7 Q. All right. Well, it's either thirty to the seventh power
 8 or thirty to the eighth power or thirty to the sixth power?

9 A. Right. That's it for SouthTrust.

10 Q. SouthTrust.

11 And Union Bank, Government's Exhibit 8 --
 12 Government's Exhibits V88-G, 8-H, 8-E and 8-F. Did you prepare
 13 all those exhibits from the bank robbery surveillance photos of
 14 Union Bank?

15 A. Yes, I did.

16 MR. STEFIN: We would offer those exhibits into
 17 evidence.

18 THE COURT: The standing objection will be overruled
 19 and they'll be received.

20 [Government Exhibit Numbers V88-G, V88-H, V88-E, V88-F
 21 were marked and received in evidence].

22 THE WITNESS: V88-G shows the left shoulder area. And
 23 basically, we can see in this image the alignment of the
 24 collar, the yoke to the left sleeve. So that's three points of
 25 comparison.

1 BY MR. STEFIN:

2 Q. What are those three again?

3 A. The yoke --

4 Q. I'm sorry?

5 A. The yoke to the left sleeve and the collar.

6 Q. The yoke itself is one?

7 A. The yoke to the -- the yoke and the left sleeve are two,
 8 and the collar is the third. No, no, no, no.

9 Q. Let me --

10 A. No, that's correct. The yoke -- you're right. The yoke to
 11 the left sleeve is one and then the collar is two.

12 Q. Okay.

13 A. Next we have the left sleeve to the yoke. It's again seen
 14 here in V88-H. So we're still on two. Then we have the yoke
 15 to the back, which is three.

16 Q. All right. So that matches up, the yoke and the back match
 17 up?

18 A. The yoke and the back match up.

19 You can see an offset in the dark vertical lines
 20 coming up from the back with the lighter dark lines, vertical
 21 lines, three.

22 Then we have the right sleeve and the lines coming
 23 from the right sleeve to the right front panel, which is four.

24 Q. They match up?

25 A. They match up.

1 We've got dark lines -- if we follow the arrows,
 2 basically, if you look at the known shirt, you can see that
 3 this top most line is offset from this lighter dark line coming
 4 from the right front panel, which we see in this area here.

5 The entire seem here is basically dead center between
 6 these sets of arrows. And you can see that as you go in from
 7 the sleeve, these dark lines kind of appear to curve up, just
 8 as on this shirt the dark lines curve up relative to the dark
 9 lines coming from the right front panel.

10 Q. So you're comparing sort of a geometric curvature, as well
 11 as the line up of the lines?

12 A. That's right. It's not just that we're talking about where
 13 exactly the specific alignment is, but also the fact that the
 14 alignment is not straight on, but it's curved here.

15 Q. All right. When you -- and when you're doing all these
 16 analyses, are you measuring with either a ruler or some other
 17 measuring device for the exact distance, for example, we're
 18 talking about this thick line here that extends down, distance
 19 between that thick line on the sleeve matching up to a certain
 20 distance to the lighter thick dark line which is on the panel?

21 A. No. No. Because in many cases, because of the draping of
 22 the shirt and the way that it creases, such measurements could
 23 give false reports.

24 And so a visual comparison in which -- it's pattern
 25 recognition, basically seeing that the patterns are the same.

1 Q. So, for example, seeing that this thin line coming from the
 2 sleeve matches -- almost comes right into the heart or the
 3 middle of this lighter thick line that's in the right panel?
 4 A. I would say that, that the dark line is at the bottom of
 5 that line.

6 Q. Okay. I'm looking from a -- I'm looking down at it, so --
 7 A. And so it's, it's below, it's slightly below.

8 Q. So you're able to, through those lineups --

9 A. Yes.

10 Q. I'm probably throwing you off, but do you know -- do you
 11 remember how many points of comparison we've reached at this
 12 point?

13 A. We had left sleeve, yoke, back, that's three, collar --
 14 four, I believe. Yes.

15 Q. You had the collar, you had yoke to left sleeve?

16 A. Collar, yoke to left sleeve.

17 Q. Yoke to the back?

18 A. Yoke to the back. And now left front panel to right
 19 sleeve.

20 Q. Okay. That's four.

21 A. And then, finally, V88-F is the right sleeve to the right
 22 cuff. And we have the alignment of these darker lines on the
 23 sleeve with the alignment of the lesser dark, slightly less
 24 dark lines on the cuff.

25 And in many of these cases -- this chart is a perfect

1 example of how sometimes making enlargements can have the
2 effect of actually making things less visible.

3 We're dealing with something that's called empty
4 magnification. You've basically got an image that is at the
5 finest resolution you can get it.

6 And once you start, once you start enlarging it, it's
7 like with the grains of silver, you're enlarging a space
8 between the grains.

9 So in this picture, it's actually looking at the
10 smaller image. Your eye can make out more details, because
11 it's concentrated in a smaller form and it's not dispersed over
12 a larger size.

13 Q. So that would be five points of identification for the
14 Union Bank photographs?

15 A. Yes.

16 Q. And at what point or is there a point that you're able to
17 conclude that all of the photographs in all the different bank
18 robberies are depicting the same shirt?

19 A. Well, for me in this case, it only took three points.
20 Because with one to the thirtieth chance in every time -- that
21 once -- that having three points --

22 So I've got thirty times thirty times thirty, which is
23 twenty-seven thousand, which is half, again, as many as
24 eighteen thousand.

25 And so for my opinion, it's enough to go over to say

1 that three of those are enough. The fact that I've got four
2 and five, six, seven and eight, just makes me all the more
3 certain.

4 Q. And what is your opinion with respect to this comparison
5 analyses?

6 A. They're all the same shirt.

7 Q. All right. And all the shirts depicted in the bank robbery
8 surveillance photographs, do you have an opinion as to whether
9 or not they are the same shirt as Exhibit 11, which is the
10 questioned shirt?

11 A. Government's Exhibit 11, in my opinion, is the
12 shirt worn by the bank robber in each one of these seven bank
13 robberies.

14 Q. Now, we had an eighth bank robbery which didn't involve the
15 shirt. You were provided the opportunity to examine a black
16 jacket?

17 A. Yes.

18 Q. I'm showing you Government's Exhibit 13. Are you able to
19 identify this exhibit?

20 A. Yes, I am.

21 Q. And what do you recognize that to be?

22 A. Government's Exhibit Number 13, the black parka, is a
23 jacket that was submitted to me at the laboratory for
24 comparison with images in this case.

25 Q. And did you attempt to perform the same photographic

1 analyses, comparison analyses from the photographs from the
2 bank surveillance photographs of the SunTrust Bank robbery on
3 January the 23rd of 2001 with the jacket itself?

4 A. Yes, I did.

5 Q. And did you prepare charts to illustrate your observations
6 and findings?

7 A. Yes, I did.

8 Q. Showing you Government's Exhibits VB6-F slash G, that's 6-F
9 slash 6-G, and VB6-C. Are these charts prepared from you --
10 prepared by you from the bank surveillance photographs of the
11 SunTrust robbery?

12 A. Yes, Government's Exhibits VB6-F slash G and VB6-C are
13 charts prepared by me for this examination.

14 Q. All right. Before you go to the charts, let's talk about
15 the jacket itself.

16 You said there was -- there's two parts to an
17 examination, right, first the class characteristics and then
18 the individual characteristics?

19 A. Yes.

20 Q. All right. So what class characteristics were you able to
21 observe with respect to Government's Exhibit 13, the black
22 jacket?

23 A. This is a dark black jacket. It actually is a parka that
24 has a hood, which I'm unrolling now so you can see that there's
25 a hood attached to the back of this jacket.

1 It has a number of zippers. Some of the zippers have
2 these little strings attached to them that makes it easier to
3 grab on to them, as well as a zipper at the very front that has
4 a string attached where it just makes it easier to find the
5 zipper.

6 The jacket is also divided into a number of panels
7 that provide almost an embroidered look to the jacket. It also
8 provides chambers for the stuffing to make sure that the jacket
9 stays warm.

10 Q. How about the sleeves themselves?

11 A. The sleeves are segmented in the panels just like the rest
12 of the jacket is.

13 And you can note that the gather gathers at the end of
14 the jacket where the wrist is, as well as these kind of
15 trapezoidal shaped, rectangular shapes of the panels, until you
16 get up to near the shoulder where there's actually a V shape to
17 this -- there's a V shape to this last panel where the sleeve
18 meets the jacket. And that's simply to make it possible to
19 attach the sleeve to the jacket.

20 Q. And those would be called class or general characteristics
21 of the item of clothing?

22 A. Yes, these are all class characteristics, generalized
23 characteristics that enable you to differentiate this jacket
24 from other types of leather jackets or jackets that don't have
25 parka hoods.

1 Q. With respect to the jacket, were you able to identify any
 2 individual characteristics that would make this jacket unique
 3 from any other -- from all the other jackets that may have been
 4 manufactured by the same manufacturing plant using the same
 5 material and the same cookie cutter cut out?

6 A. Well, the only, the only characteristics that this jacket's
 7 going to have are going to be wear and tear characteristics,
 8 stains, marks.

9 Or in this case, if you look closely, you see these
 10 little spots where the down appears to be coming out. Now, the
 11 persistence of something like that, it could disappeared just
 12 from being transported, so you can't necessarily see that.

13 But that's about the only features that I noticed
 14 outside of there being any markings on the jacket that might be
 15 visible.

16 That would not be -- that would not commit one to
 17 individualize this jacket. This is a good jacket to wear if
 18 you're robbing a bank, because you can't individualize it.

19 Q. Whereas, the shirt would not be a good shirt to wear when
 20 robbing a bank?

21 A. Correct.

22 Q. With respect to the jacket then, what analysis or
 23 comparison are you able to perform given the fact that you
 24 cannot identify any individual characteristics of the jacket
 25 that would make it unique in the world of all the jackets

1 manufactured in the same way?

2 A. I can, I can, and did in this case, conduct an examination
 3 to see if the class characteristics matched.

4 If the class characteristics match, then you can say
 5 that it's possible for this jacket to have been worn by the
 6 bank robber.

7 If the class characteristics don't match, then I can
 8 say this jacket wasn't worn by the bank robber.

9 Q. Can you at least determine whether or not the jacket is
 10 consistent to the jacket depicted in the bank robbery
 11 photographs?

12 A. Yes.

13 Q. Let me show you -- now, getting back to our Exhibits 6-C
 14 and 6-G. Would you show the members of the jury what analyses
 15 you did and what points of comparison, I'll use that term for
 16 this jacket, you were able to find?

17 A. 6-G and -- 6-F and 6-G, which are shown on the left-hand
 18 side of this chart, show the back of the bank robber as he's
 19 leaving the bank.

20 At the top, the bank robber is closer to the counter.
 21 And the one big white arrow there is pointing to the hood on
 22 the parka that's sticking out behind the head of the bank
 23 robber.

24 The bottom chart, the bottom picture on the left-hand
 25 side is showing the very bottom of the jacket that shows a

1 little bob or string sticking down from the bottom of the
 2 jacket.

3 On the right-hand side of this chart, it's simply
 4 laying out the parka. And the arrow's pointing --

5 Q. These are photos you took; am I right?

6 A. These are photographs that I took on the right-hand side.
 7 These are photographs --

8 Q. Their right? Their right or --

9 A. Your right. Your right.

10 The right-hand side of this chart is labeled known
 11 jacket. The white arrow at the top is pointing to the hood.
 12 And on the bottom, the black arrow in the very corner is
 13 pointing to the bob that is on the main zipper here.

14 Now, these aren't individual identifying
 15 characteristics, these are simply class characteristics.
 16 They're consistent between this jacket and the one worn by the
 17 bank robber.

18 If we go to the second chart, which is VB6-C, we get a
 19 front view of the bank robber and we can see the left, a very
 20 good view of the left sleeve.

21 And the arrows here, the black arrows at the -- on the
 22 left-hand side and on the right side of the jacket itself are
 23 pointing to seems, creases that you can see in the jacket that
 24 correspond on the jacket worn by the bank robber with the
 25 creases present on this jacket, Government's Exhibit 13.

1 Finally, at the very bottom of the bank robber
 2 photograph, on the left-hand side, you can see that there's a
 3 gather, a creased gather that is visible here with the lowest
 4 arrow, that is likewise present on the left-hand sleeve of this
 5 jacket.

6 Q. Based on these photographs, can you say that at least in
 7 appearance, that the jacket depicted in the photographs is
 8 identical in appearance to the Government's Exhibit, the black
 9 jacket that was seized?

10 A. I would -- the way I would say it is that the jacket
 11 seized, Government's Exhibit 13, is indistinguishable from the
 12 one worn by the bank robber.

13 Q. You just can't say to a scientific certainty that it is, in
 14 fact, the same jacket as opposed to the one identical specific
 15 black jacket seized?

16 A. Correct.

17 Q. Now, you were also asked to do a comparison analysis on a
 18 Mary Kay bag that was provided to you, Government's Exhibit 14?

19 A. Yes.

20 THE COURT: Before we get to Mary Kay, let's take our
 21 break. It's a little after 4 o'clock.

22 We'll be in recess for fifteen minutes, ladies and
 23 gentlemen.

24 Would you take the jury out, please.

25 [Brief recess]

1 * THE COURT: Ready, Mr. Stefin?

2 MR. STEFIN: I think I am.

3 THE COURT: All right. Bring in the jury.

4 [Jury enters the courtroom].

5 THE COURT: Mr. Stefin, you may continue your direct
6 examination.

7 BY MR. STEFIN:

8 Q. I believe we were at the Mary Kay bag, Government's Exhibit
9 14. Can you -- were you able to identify this exhibit as
10 something that was presented to you for comparison, for
11 photographic comparison purposes?

12 A. Yes, this is the bag that was submitted to me at the FBI
13 laboratory for comparison in this case.

14 Q. All right. And first of all, what identification -- what
15 observations were you able to make in terms of the class
16 characteristics of the bag?

17 A. Basically, this is a handbag that has two straps, two dark
18 straps, it's got a pocket on the front side or on the back
19 side, depending on whether you consider it the front or the
20 back.

21 It's made primarily of four -- multiple panels, two
22 side panels, two end panels, a bottom panel and a secondary
23 panel that is overlapping this side panel.

24 It's a striped bag that has these bright snaps on the
25 end. If you look very carefully at the stripes on the side,

1 you'll see that they're -- basically, it's silver and black,
2 dark silver and black stripes on the bag.

3 Q. All right. And I was distracted for a second in the
4 beginning. Did you mention the manufacturer of the bag?

5 A. The manufacturer of the bag is indicated by the name Mary
6 Kay on the side.

7 Q. And in terms of the stripes, can you identify, at least for
8 the record purposes, what distinguishing features there are
9 about the stripes?

10 A. Well, the stripes are evenly sized stripes, each one's
11 about a quarter of an inch wide, and they are alternating black
12 and silver stripes.

13 Q. At the same spacing, the same consistent --

14 A. The spacing is consistent throughout, across the bag, yes.

15 Q. And you indicated that it has hand straps?

16 A. Yes.

17 Q. On the top of the bag?

18 A. Yes.

19 Q. And you would measure this bag -- if you had to estimate,
20 the size of the bag would be, the diameter would be about what?

21 A. It's about fifteen or sixteen inches wide, a foot high and
22 three or four inches deep.

23 Q. And showing you what's been marked as Government's Exhibit
24 7-EE, regarding the bank robbery at Southtrust, is this a chart
25 that you prepared for comparison analysis?

1 A. Yes, Government's Exhibit 7-EE is a chart that I
2 prepared.

3 MR. STEFIN: We would offer that into evidence at this
4 time.

5 MR. HOWES: Same objection, Your Honor.

6 THE COURT: Objection overruled. The exhibit is
7 received into evidence.

8 [Government Exhibit Number 7-EE was marked and
9 received in evidence].

10 BY MR. STEFIN:

11 Q. By the way, I think I asked you, you talked about the class
12 characteristics of this bag. Were you able to identify, from
13 looking at the bag itself, any individual characteristics,
14 identifying characteristics which would make this bag unique
15 from all the other Mary Kay bags that may have come off the
16 assembly line at the same time, using the same fabric, and
17 being the same sized bag?

18 A. Well, first of all, let me say that there are some small
19 white markings on the bag that are -- it's not clear to me
20 whether it could be marker or some kind of staining on the bag
21 that occurs at various places around the bag, on the back here,
22 little white marks that could be used to differentiate this bag
23 from all of the bags.

24 As far as the manufacturing characteristics, we've got
25 another repeating pattern here, much like the one in the shirt,

1 in which we've got the dark and bright stripes.

2 And if we look at the ends of the bag, if we look at
3 this end panel, for example, you'll see that the very top
4 stripe on this end of the bag is a black stripe, totally black
5 stripe.

6 And if we look at this end, and you look very closely
7 at where the seem, where the top is, you'll see that there's
8 actually a little silver there.

9 Likewise, if you look at the edges at this, the side
10 panel, the very top of this is about a half of one of those
11 silver lines.

12 On the other side, it's not quite a half of one of
13 those silver lines. But it's basically silver on the top of
14 the sides, silver on the top of this side panel, end panel, but
15 black -- maybe a little bit of silver there, but when it's
16 folded over, it's black on the top.

17 Also, if you look at where the end panel meets the
18 side panel, you've basically got on this end the silver
19 effectively lining up with the black, going from the end panel
20 to the side panel.

21 At the other end, it's a slight offset, slightly
22 different, where it's kind of half and half, it doesn't match
23 up exactly.

24 Q. All right. Are the results of the random identifying
25 features in terms of the way the bag was manufactured when

1 these parts were sewn together?
 2 A. Now, I have never been to a bag manufacturing plant, but
 3 assuming that the same sewing practices were used --
 4 MR. HOWES: Judge, I'm going to object.
 5 THE COURT: Sustained.
 6 BY MR. STEFIN:
 7 Q. Well, do you know -- so you don't know the manufacturing
 8 process with respect to that particular bag?
 9 A. That's correct.
 10 Q. Okay. Were you able to do a comparison in any regard to
 11 determine whether or not there were points of identification
 12 which are similar to the Government's Exhibit 14 with the bag
 13 depicted in the robbery photos from the SunTrust bank robbery?
 14 A. Yes, I was.
 15 Q. All right. And these pictures on the left-hand side, the
 16 right-hand side of the jurors rather, these are -- are these
 17 your photographs that you --
 18 A. Yes, they are.
 19 Q. And these are, on the left-hand side, of the bank robbery
 20 surveillance photos?
 21 A. Correct.
 22 Q. And what identifying -- what did your comparison yield?
 23 A. Basically, I found a similarity in class characteristics
 24 between the bag, the Mary Kay bag -- Government's Exhibit 14
 25 and the bag carried by the bank robber in the SouthTrust Bank

1 robbery as depicted on the left-hand side of Government's
 2 Exhibit VB7-EE.
 3 Q. And what class characteristics did you identify and
 4 observe?
 5 A. The striped pattern appears to be the same, that is to say
 6 there is a very dark line and a slightly less dark that would
 7 be consistent with silver and black.
 8 There are bright features at the end of the bag that
 9 would be consistent with bright snaps, as seen on this bag.
 10 The bright features occur on one of the silver stripes for the
 11 most part, which is consistent with this bag.
 12 The very top of this back side of the bag, the side
 13 that does not have the pouch, ends with a bright line at the
 14 very top, which is consistent with the bright line at the top
 15 here.
 16 Likewise, the very top of this end panel is bright,
 17 similar to the end panel on the bag here.
 18 Finally, the alignment of the stripes here, which
 19 appears to be the black to silver exactly or close to it, is
 20 similar on both the Government's Exhibit 14 bag and the
 21 Government's Exhibit -- and the 7-EE chart.
 22 Q. Are you able to offer an opinion as to whether Government's
 23 Exhibit 14 is indistinguishable from the bag that's depicted in
 24 the bank surveillance photographs of the SunTrust Bank robbery?
 25 A. Yes.

1 Q. And what is your opinion?
 2 A. This Government's Exhibit 14 is indistinguishable from the
 3 bag in Government's Exhibit 7-EE.
 4 Q. Okay. All right. We also asked you to enhance some of the
 5 photographs to determine if you could -- to see if you could
 6 determine what objects were possibly on the wrist of the bank
 7 robber in some of the surveillance photographs; is that
 8 correct?
 9 A. Yes.
 10 Q. Let me show you -- take a look at what's been marked as
 11 Government's Exhibits VB7-EE, 3-J, 4-H and 5-F. Are these all
 12 charts prepared by you based on the bank surveillance
 13 photographs?
 14 A. Yes, these are charts that I prepared to demonstrate this
 15 exhibit.
 16 Q. All right. And you also were asked to compare it with
 17 known photographs of the defendant, Wilbert McReith, that were
 18 supplied to you?
 19 A. Yes.
 20 Q. Specifically as applied in Government's Exhibit 7-D and
 21 7-E, what, if anything, can you tell us about the items, if
 22 any, depicted on the wrist of the bank robber, starting with
 23 whichever chart best illustrates your testimony?
 24 A. I'm going to start with Exhibit 7-E, VB7-E, taken from the
 25 SouthTrust Bank. On the left-hand side and in the middle are

1 two photographs taken from the bank at the top.
 2 And on the lower part are enlargements of those
 3 showing the left wrist of the individual.
 4 Q. The bank robber.
 5 A. If you look on the lower left-hand side of this chart, you
 6 see the left-hand. And there are what appear to be two dark
 7 linear features that go across the wrist of the individual with
 8 a gap in between them, a light linear gap in the middle of
 9 them.
 10 If you look at the middle chart on the bottom, there
 11 are, likewise, towards the bottom of the arm, two dark linear
 12 features, on top of which there are what appear to be circular
 13 relatively bright features that are wider than the last black
 14 linear features there.
 15 Q. And did you compare or observe the object depicted on the
 16 known photographs of Wilbert McReith as depicted in the
 17 photographs on Government's Exhibit VB7-E?
 18 A. Yes.
 19 Q. And from an observational standpoint, what, if anything,
 20 can you say about the objects on the left wrist of the
 21 defendant as depicted in this?
 22 A. There are two dark linear features on his left wrist that
 23 have a gap in between them, and that also have features on them
 24 that are wider than the other from the black linear feature.
 25 Q. Let me just see if I can clarify. This picture on the

1 bottom right-hand corner, is this coming from this photograph
 2 here?
 3 A. Yes, the photograph on the bottom right-hand side is simply
 4 an enlargement of the left hand of the subject depicted here
 5 that has been rotated ninety degrees so that it's similar in
 6 orientation to the view on the far left side.
 7 Q. All right. And based on your analysis, can you tell us
 8 whether or not the object, as it appears in the known
 9 photograph of McKreith, is similar to the objects that are
 10 depicted in the bank robbery surveillance photos of the
 11 SouthTrust Bank robbery?
 12 A. Yes.
 13 Q. Can you say with a scientific certainty what it is that the
 14 bank robber was wearing on his left wrist as depicted in those
 15 photographs?
 16 A. No.
 17 Q. And why is that?
 18 A. The resolution isn't sufficient to see what exactly is on
 19 the wrist.
 20 Q. Can you say whether or not the robber appears to be wearing
 21 two bands of some sort?
 22 A. Yes, simply from the stand point of bands being features
 23 that wrap around one's wrist.
 24 Q. Would that be consistent with the robber wearing two
 25 watches on his left wrist?

1 A. Yes, it would.
 2 Q. And can you illustrate this again with some of -- one of
 3 the other bank robberies?
 4 A. The chart VB3-J is labeled wrist of questioned subject in
 5 First Southern Bank, October 19th, 2000. The two left -- the
 6 images on the left and in the center are images taken from the
 7 videotape showing the left wrist of the individual in the bank.
 8 On the far left side at the bottom, there are again
 9 two dark bands on the side that have a slight brightness in
 10 between them, brightening in between them.
 11 On the middle image there is again what appears to be
 12 a relatively wide area of dark features that have two bright
 13 areas associated with them, one in the upper right, which is
 14 marked by the black arrow, and one on the -- towards the back
 15 left, which is marked by the white arrow.
 16 Q. Two bright areas which would be consistent with what?
 17 A. Well, they could be consistent with a watch or watch face.
 18 Q. All right. And again, would these photographs illustrate
 19 -- do you have an opinion as to whether or not these
 20 photographs are consistent with the bank robber again wearing
 21 two watches on his left wrist?
 22 MR. HOWES: Objection, Judge.
 23 THE COURT: Sustained.
 24 MR. STEFIN: I asked if they were consistent, if the
 25 photographs were consistent.

1 THE COURT: It's leading, that's the problem.
 2 MR. STEFIN: Okay. Thank you, Your Honor.
 3 BY MR. STEFIN:
 4 Q. Well, let me ask you then, what opinion, if any, can you
 5 offer with respect to the observations made in Government's
 6 Exhibit VB3-J?
 7 A. The features observed on the left wrist of the bank robber
 8 are consistent with the presence of two wrist watches that have
 9 dark straps on them.
 10 Q. The Bank of America robbery, 4-H. And what observations
 11 were you able to make with respect to those photographs?
 12 A. On the left side and in the middle are two images taken
 13 from the Bank of America robbery. On the bottom are
 14 enlargements taken from those.
 15 There is what appears to be a very broad area of strap
 16 or dark bands on the left wrist of the individual.
 17 Q. Again, what opinion can you draw, if any, with respect to
 18 the objects depicted on the left wrist of the robber?
 19 A. The width of these features and the presence of bright
 20 areas would be consistent with watch faces, are consistent with
 21 -- would be consistent with these features being two watches on
 22 the left wrist of the bank robber.
 23 Q. Finally, with respect to the Bank United photographs,
 24 Government's Exhibit VB3-F. Would those photographs also be
 25 consistent with the robber wearing two wrist watches?

1 A. Yes, they would.
 2 Q. And finally, you were asked to do a -- are you familiar
 3 with the fact that one of the images from the First Southern
 4 Bank robbery of October 19th, 2000, caught a profile of the
 5 robber as he was exiting the doors of the bank?
 6 Were you asked to do an analysis of those photographs
 7 to determine if you could, you know, recognize or identify any
 8 identifying features of the bank robber which could be used for
 9 comparison purposes?
 10 A. Yes, I was asked to do that.
 11 Q. All right. Is this chart, Government's Exhibit 3-G, a
 12 chart that was prepared by you for that purpose?
 13 A. Yes, Government Exhibit 3-G is a chart that was prepared by
 14 me to demonstrate that comparison.
 15 MR. STEFIN: We would offer 3-G into evidence at this
 16 time, VB3-G, Your Honor.
 17 MR. HOWES: Same objection, Your Honor.
 18 THE COURT: Objection overruled. It will be received.
 19 [Government Exhibit Number VB3-G was marked and
 20 received in evidence].
 21 BY MR. STEFIN:
 22 Q. Could you identify what's depicted in the robbery
 23 photographs and what you did?
 24 A. The two left most images at the top and the center image at
 25 the top are taken from the bank surveillance videotape

1 depicting the First Southern Bank robbery of October 19th,
2 2000.

3 On the right-hand side is a known -- at the top, is a
4 known photograph of Mr. McKreith. The bottom picture on the
5 right-hand side is simply that photograph rotated approximately
6 forty-five degrees to simulate the same angle as we have of the
7 bank robber's face.

8 The arrows are simply, in this chart, pointing to the
9 profile view that one can see depicting the nose, mouth and
10 chin of the individual who was exiting the bank.

11 Q. And were you able to make any identification of facial
12 features which would allow you to render an opinion as to
13 whether or not the individual depicted in the bank robbery
14 photographs is the same or similar to the defendant as depicted
15 in this photograph?

16 MR. HOWES: Objection. Compound question.

17 THE COURT: Sustained.

18 BY MR. STEFIN:

19 Q. Did you examine -- did you do a comparative analysis of the
20 bank robbery photographs to the known photograph of the
21 defendant, Mr. McKreith?

22 A. Yes, I did.

23 Q. And when you're doing facial feature comparisons, what are
24 the types of facial features that you are looking for that
25 might enable you to make a positive comparison?

1 A. The class characteristics of a face are things like the
2 shape of a nose, shape of a mouth, chin, profile, those are
3 class characteristics.

4 The individual identifying characteristics that are
5 necessary to positively identify someone include such things as
6 moles, scars, chipped teeth, ear patterns or other facial
7 minutia.

8 This -- these images from the First Southern Bank
9 don't permit the -- one to resolve such features on the face of
10 the bank robber.

11 Q. What do you mean it doesn't permit?

12 A. It's not good enough.

13 Q. The quality is not --

14 A. It's too far away from the camera for one to see enough
15 detail to see those kinds of features.

16 Q. Were you able to compare class characteristics, such as you
17 were describing a moment ago?

18 A. Yes.

19 Q. And what class characteristics did you compare and what
20 were your results?

21 A. Basically, just looking at the overall characteristics of
22 the profile, which include the shape of the nose, mouth and
23 chin.

24 Q. And what did you find there?

25 A. There are similarities between Mr. McKreith and the bank

1 robber.

2 Q. And what similarities were they?

3 A. Similarities in the shape of the nose, mouth and chin.

4 Q. Did you find any dissimilarities that would basically
5 exclude Mr. McKreith as being the individual depicted in the
6 bank robbery photographs?

7 A. No.

8 Q. Do you have an opinion, therefore, whether or not the bank
9 robbery photographs -- the individual depicted in the robbery
10 photographs is consistent with the appearance of the defendant
11 as exhibited in the known photograph of him?

12 A. Yes, I have an opinion.

13 Q. And that is that?

14 A. The features are consistent.

15 Q. Can you say with scientific certainty, based on the
16 photographic evidence alone, that the defendant is -- that he
17 is, in deed, the defendant depicted in the bank robbery
18 surveillance photographs?

19 A. No.

20 Q. Even though you can't make a scientific analysis or
21 identification, would that mean that a person that the
22 defendant knows or someone who knows the defendant would be
23 unable to make an identification based on the quality or
24 resolution of these particular photographs?

25 MR. HOWES: Objection.

1 THE COURT: Sustained.

2 BY MR. STEFIN:

3 Q. Is there a difference between scientific identification
4 based on these known characteristics and recognition by an
5 individual?

6 A. Yes, there are.

7 Q. And what are those differences?

8 MR. HOWES: Objection.

9 THE COURT: Overruled.

10 THE WITNESS: Recognition does not require that one
11 see facial minutia, such as scars, moles or minutia. When I
12 conduct a scientific comparison and identification, I don't
13 typically know the individual that I am looking at.

14 So I have to go upon specific individual features that
15 I can point to and say, this feature is the same as this
16 questioned person and this known person.

17 People that know other people -- a mother doesn't need
18 to see the face of her child to recognize her child. She can
19 look at the back of the head and know that it's her child. And
20 that comes from familiarity.

21 There are cues that can be picked up from longtime or
22 even in some cases short time acquaintance with an individual
23 that permits someone to say, yes, that appears to be the same
24 person that I know, I recognize that person.

25

1 BY MR. STEFIN:

2 Q. But from your perspective, you would not be able to
3 scientifically make that conclusion?

4 A. Correct.

5 Q. But an individual who knows the individual may be able to
6 make a recognition?

7 MR. HOWES: Objection, Judge?

8 THE COURT: Overruled.

9 THE WITNESS: Yeah, it's possible that somebody could
10 recognize this individual based on these photographs.

11 MR. STEFIN: One moment, please, Your Honor?

12 THE COURT: Yes, sir.

13 BY MR. STEFIN:

14 Q. Finally, for illustrative purposes, with respect to the
15 shirt identification, I want to show you two shirts which have
16 been labeled VH-1 and VH-2, it stands for Van Huesen, for
17 identification, and ask you if you can illustrate to the
18 members of the jury some of the features that you have been
19 talking about in terms of specific points of identification of
20 what would appear to be two identical shirts manufactured by
21 the same company.

22 First, if you could identify what the shirts are,
23 their size, the manufacturer, and then possibly illustrate
24 whether or not there are different points of identification in
25 the same unit here, on the shirt?

1 stripe. Remember, these are the same size shirts. However,
2 that stripe is well above the button on VH-1.

3 Finally, if we go to look at where the yoke meets the
4 right front panel, you can see there's actually a fine double
5 line that occurs vertically on the right front panel.

6 Where it meets the yoke, it actually meets the tip of
7 a very, of a light line. Right here on this seem, that tip
8 meets the double light line.

9 If we look on this shirt, VH-2, that bright line
10 coming off of the collar is well past that double striped line.
11 Same thing on the other side, the yoke, where it meets the left
12 front panel, is different on the two shirts.

13 And without taking this shirt apart --

14 Q. You basically pointed out four areas of comparison which
15 would enable you to conclude what, for example?

16 A. That the shirts are different.

17 Q. So, for example, if you had a photograph of one of the
18 shirts and you had the shirt itself that you had to make a
19 comparison from, these are the types of things that you would
20 be able to look for?

21 A. To differentiate the shirts, yes, that's correct.

22 MR. STEFIN: Your Honor, at this time, for
23 demonstrative purposes, we would offer into evidence
24 Government's Exhibits VH-1 and VH-2.

25 THE COURT: They'll be received in evidence.

1 A. Both VH-1 and VH-2 are labeled as Van Huesen shirts. They
2 are both extra extra large neck size, eighteen to eighteen
3 and-a-half, sixty-five percent polyester, thirty-five percent
4 cotton, made in China. They are patterned shirts.

5 Q. Looking at them, they appear to be identical shirts. What
6 are the features of this shirt that you can show to the jury
7 from these shirts, features that allow you to distinguish one
8 shirt from the other?

9 A. The class characteristics of these shirts are the same,
10 they both are collared shirts, button-down with the same
11 pattern.

12 However, if we get in to look at where the pattern
13 occurs on the individual pieces, we can easily distinguish
14 these two shirts from one another.

15 First of all, let me draw your attention to VH-1, the
16 tip of the collar, the right side tip of the collar. If you
17 look at the button, you'll notice that the button lies directly
18 on top of this light line here, okay?

19 That light line appears just below that button on
20 VH-2, it does not lie on top. That is an example of how the
21 collars would be cut out from different locations along the
22 fabric.

23 Likewise, if we just look at the front of these shirts
24 and see where the first button on the chest comes in, you can
25 see that on VH-2, this button lies directly on top of that

1 [Government Exhibit Numbers VH-1 and VH-2 were marked
2 and received in evidence].

3 MR. STEFIN: And at this point, we would tender the
4 witness for cross-examination.

5 THE COURT: All right. Before we do that, tell me
6 again how you arrived at this figure of one in thirty-five with
7 respect to the shirt testimony.

8 THE WITNESS: May I be seated?

9 THE COURT: Sure, have a seat. Absolutely. I'm sure
10 you're tired.

11 THE WITNESS: In order to align the features and come
12 to some estimate of what those features are, I'm actually
13 measuring the width of these features and the distance between
14 them.

15 The darkest thin line on this shirt is approximately
16 one tenth of an inch across, okay? That black line is repeated
17 every three and-a-half inches, okay?

18 So that if one were to lay down one three and-a-half
19 inch piece of cloth that was cut off in square and then took
20 another similarly cut off piece and just laid it down and you
21 slid it along, then every three and-a-half inches that black
22 stripe would align.

23 And so assuming that is a random process, which the
24 demonstrative exhibits help demonstrate, it is a one in
25 thirty-five chance that that feature will align with that

1 feature, or by extension, any other feature on that.

2 THE COURT: Very good.

3 Mr. Howes, I'm going to let you cross-examine in the
4 morning, since I'm sure the witness is exhausted. And if he's
5 not, the rest of us are.

6 MR. HOWES: Yes, sir.

7 THE COURT: So we'll be in recess.

8 We're going to recess at this time, members of the
9 jury, until tomorrow morning at 9 o'clock. And when we
10 reconvene, we'll proceed with the cross-examination of the
11 witness.

12 So thank you again for your attention and your
13 patience. Court will be in recess until tomorrow morning at
14 9:00 a.m.

15 And you may take the jury out, Madam Clerk.

16 You may step down, sir.

17 And I'd like counsel to remain for a few minutes so we
18 can plan our schedule for tomorrow.

19 [Jury leaves the courtroom]

20 THE COURT: Okay. All right. Be seated, please.

21 We're going to recess tomorrow at 3 o'clock to accommodate this
22 lady that has to take her husband to the doctor.

23 And how long do you think the cross is going to take,
24 Mr. Howes? I know you can't tell, but what do you --

25 MR. HOWES: I certainly don't think it will be more

1 than an hour.

2 THE COURT: All right.

3 MR. HOWES: I don't expect it will be anywhere near
4 that long. I expect it to be much quicker than that.

5 THE COURT: All right.

6 MR. HOWES: Judge, the government has stipulated to
7 two items of evidence that I want to introduce. There's one
8 other item that we're going to fight about, which is a picture
9 from a magazine article.

10 Unless I can get another witness, I might be resting
11 at that point. And what I'm saying is that although under
12 subpoena, the witness is not in communication.

13 So for your planning purposes, and I told Ms. Mitrani
14 this, I thought we'd be a lot further along today than we were,
15 I let her know over the weekend as a courtesy that I expected
16 to be done today, and I thought we might even be in closings
17 today.

18 THE COURT: Okay. All right. I will need a form of
19 verdict for the United States and -- well, a form of verdict
20 will take care of both guilty and not guilty -- understanding
21 that the last two counts of the superseding indictment have
22 been submitted to the Court.

23 I'd like a copy of the government's requested jury
24 instructions first thing in the morning and any special
25 instructions that the defendant may have at the same time.

1 If we're able to finish the testimony by the noon
2 recess, I would propose to argue the case in the afternoon.

3 How long do you need in argument?

4 MS. MITRANI: Hour and-a-half, Your Honor.

5 MR. HOWES: Hour and-a-half.

6 THE COURT: All right. Seems fair.

7 MS. MITRANI: Your Honor, may I -- Your Honor, the
8 government obviously anticipates resting tomorrow morning.

9 They may put on a couple of short witnesses after the expert.

10 How does Your Honor want to handle the counts that are
11 before Your Honor? There are only a few elements that have not
12 been brought into this case. I think Mr. Howes will stipulate.

13 Is that something that you want presented to your
14 court -- to Your Honor before the government rests or is that
15 something we can do afterwards, after the jury is deliberating?

16 THE COURT: Well, you can rest as to Counts 1 -- what
17 are they?

18 MS. MITRANI: One through twelve, Your Honor.

19 THE COURT: -- 1 through 12, and then we can take up
20 the remaining elements as concerns the last two counts after
21 the jury has retired.

22 MS. MITRANI: So as to not prejudice, tomorrow I
23 won't, I won't specifically say Counts 1 through 12, because
24 that might imply to other counts. I'll say the government
25 rests as discussed yesterday in court.

1 MR. HOWES: The government will announce it's resting,
2 Judge, it's resting to the jury.

3 And, Judge, so that Mr. McKreith understands, one of
4 the things the government has to prove is that the two guns
5 came from outside, were manufactured outside the State of
6 Florida for it to be a federal offense.

7 And I already know that these guns were not
8 manufactured in the State of Florida. And they have a witness
9 from ATF who would come in and testify to that, okay? Not --
10 they're not -- that's not an issue.

11 The second thing that they've got to prove is that
12 you're a convicted felon, and that's why we severed this count.
13 The Judge can take -- they can ask, the government can ask the
14 Judge to take judicial notice of the fact that there's a
15 pending parole violation -- or supervised release violation
16 pending against you at this time, and that's sufficient, as
17 long as somebody comes in and identifies you.

18 And Kelly Morris could identify you. So we're going
19 to stipulate to most of that stuff tomorrow. That's what she's
20 talking about when she's talking about stipulations; do you
21 understand?

22 THE DEFENDANT: Yes.

23 THE COURT: What about the magazine thing?

24 MR. HOWES: Judge, the magazine --

25 THE COURT: You said there's a dispute about that,

1 '1 Whatever it is.

2 MR. HOWES: It's Defendant's Exhibit 15. It's a
3 photograph of a black male with two watches on each hand, for
4 the record.

5 THE COURT: Okay.

6 MR. HOWES: Admitted for the record.

7 THE COURT: And?

8 MR. HOWES: And I would move to introduce it into
9 evidence. And that will be the one that we're going to have
10 some issue with.

11 The other ones are bank records of Mr. McKeith's
12 mother and father. And the government's going to stipulate to
13 introducing them. So it's not -- those are not an issue.

14 This would be the only, this would be the only matter
15 that would be of issue or concern to the parties, I think,
16 tomorrow or to the Court.

17 THE COURT: So the relevance of Defendant's Exhibit 15
18 is to show that it's not uncommon for people to wear two
19 watches? This fellow here, he's got four watches.

20 MR. HOWES: In certain, in certain segments of our
21 culture in society, Judge, it is not necessarily an uncommon
22 factor, and it is, in fact, a fashion statement for people to
23 do so.

24 There is a Rolex that is called a Puff Daddy that has
25 an absolute diamond face on it with diamond bezel, and I don't

1 know how many other diamonds it has on it, but it is called a
2 Puff Daddy Rolex.

3 THE COURT: There ain't no more Puff Daddy.

4 MR. HOWES: Well, but this was back when he was Puff
5 Daddy.

6 THE COURT: Oh, okay.

7 MR. HOWES: And the Rolex doesn't change his name
8 because he's changed his.

9 THE COURT: Okay.

10 MR. HOWES: Yeah, he's Sean Combs now or something.
11 He's going on to his next level of marketing.

12 MS. MITRANI: That was a kind way of putting it.

13 THE COURT: All right. What does the Government think
14 about this exhibit?

15 MS. MITRANI: Your Honor, it's some magazine cover.
16 So I'm going to -- I mean, for all we know -- I mean, it seems
17 like almost like it's advertising something.

18 And he has like, as I recall, two rings with dollar
19 signs and it's advertising something, big -- I don't have it in
20 front of me. It seems to be advertising something.

21 I just don't know how probative --

22 THE COURT: It's advertising music records.

23 MS. MITRANI: Right.

24 THE COURT: CDs, I think.

25 MS. MITRANI: Right.

1 THE COURT: Cash Money Records. Okay.

2 MS. MITRANI: Yeah. It would be one thing if it was a
3 picture of a real person in real life as opposed to an
4 advertising, you know.

5 We don't know when and where it was created and the
6 context. And, you know, you see a lot of advertising -- I see
7 a lot of advertising for models in things they wear I never see
8 on the street.

9 So I just, I think it's confusing and it's -- it's
10 confusion to the jury that way in it's probative value.

11 MR. HOWES: Judge, I don't know how it could confuse
12 the jury. It's a -- it is clearly what it is, it is a picture
13 from a magazine of someone advertising watches or albums or
14 something.

15 But it clearly shows my client's ethnic heritage in
16 the arena in which he lives. And, therefore, I think it is
17 probative.

18 MS. MITRANI: And it wasn't even found in the house,
19 Your Honor. I mean, I guess it would be one thing if it was
20 found in his house, but I don't know where this came from. So
21 there's no indication the defendant even ever saw this.

22 MR. HOWES: Well, you know, Judge, let me -- the
23 easiest response to that is, is that with all due respect, you
24 have white FBI agents searching a house looking for evidence of
25 a bank robbery. They're not necessarily looking through

1 magazines to see what they can find.

2 So the fact that the source of where the magazine
3 article comes from doesn't necessarily mean that it doesn't
4 have a value with respect to the case, it means that the FBI
5 didn't see the evidentiary value of it.

6 THE COURT: I think it has some relevance to the
7 issues in this case, so the government's objection to
8 Defendant's Exhibit 15 will be overruled. The exhibit will be
9 received.

10 However, the back is -- what's on the back of this
11 piece of paper is certainly irrelevant, such as a story about
12 the burial of Holly Solacy (phonetic) and questions about
13 dreadlocks and nobody knows who won the last presidential
14 election.

15 MR. HOWES: Judge, I will, I will affix it with
16 something so that it is not visible.

17 THE COURT: That's good. Okay. But the picture of
18 the gentleman wearing four watches will be received.

19 Indeed, the Dolphins had a punter who used to wear a
20 watch playing football.

21 [Brief interruption]

22 THE COURT: Okay. So bring me your jury instructions,
23 your verdict form. And if we conclude by noon, we'll argue the
24 case tomorrow. Good night. Thank you very much.

25 [Trial adjourned].